राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 19 सितम्बर, 2024 / 28 भाद्रपद, 1946

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated 4th March, 2024

No. LEP-A006/7/2021-LEP.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of

awards of the following cases announced by the Presiding Judge, Labour Court, Dharamshala on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette" :—

Sl. No.	Case No	Petitioner	Respondent	Date of Award/Order
1.	Ref. 178/17	Sh. Darshan Singh	D.F.O Joginder Nagar	05-12-2023
2.	Ref.114/21	Sh.Vivek Gill	M/SVishal Pro.M.C.Dharamsala	09-12-2023
3.	Ref.18/23	Sh. Akash	M.D., M/S Stanfoed Lab.Una	09-12-2023
4.	Ref.111/19	Sh. Man Singh	M.D.I.A. Energy,Chanju-I, Chamba	23-12-2023
5.	Ref.117/19	Sh. Kamal Dev	-do-	-do-
6.	Ref.114/19	Sh. Duni Chand	-do-	-do-
7.	Ref.120/19	Sh. Khem Raj	-do-	-do-
8.	Ref.115/19	Sh. Bodh Raj	-do-	-do-
9.	Ref.113/19	Sh. Lobhi Ram	-do-	-do-
10.	Ref.119/19	Sh. Hem Raj	-do-	-do-
11.	Ref.116/19	Sh. Ram Lal	-do-	-do-
12.	Ref.110/19	Sh. Pardeep Kumar	-do-	-do-
13.	Ref.118/19	Sh. Jhanda Ram	-do-	-do-
14.	Ref.109/19	Sh. Chuhru Ram	-do-	-do-
15.	Ref.112/19	Sh. Tej Singh	-do-	-do-

By order,

Dr. Abhishek Jain, IAS,
Secretary (Lab. & Emp.)

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 178/2017

Date of Institution : 16-8-2017

Date of Decision : 05-12-2023

Shri Darshan Singh s/o Shri Dharam Chand, r/o Village Kadhar, P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. ..*Petitioner.*

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P. ..*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. N.L. Kaundal, Ld. AR
	:	Sh. Vijay Kaundal, Ld. Adv.
	:	Sh. Rajat Chaudhary, Ld. Adv.
For the respondent	:	Sh. Gaurav Keshav, Ld. ADA

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

> "Whether time to time termination of the services of Shri Darshan Singh s/o Shri Dharam Chand, r/o Village Kadhar, P.O. Gumma, Tehsil Joginder Nagar, District Mandi, H.P. during April, 1996 to 15-04-2009 and non regularization of his daily wages services after completion of 8 years as per Government policy by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief, amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was engaged by the respondent on muster roll as chowkidar in watch and ward Check Post Ghatasni *w.e.f.* 24-4-1987 and he continuously worked as such upto April 1996. Thereafter he was transferred from Ghatasni Check Post to Beat Shila-Swar by the then forest guard Shri Kikar Singh without any written order. He immediately reported to the then Range Officer Urla, however, the Range Officer did not allow him to work in the check post Ghatasni. During the period from 1987 to 1996, he has worked for more than 240 days in each calendar year and on 30-4-1996 he was not allowed to join his duty and his name was struck off from the muster roll without any reason. He filed O.A. No.(M) 377 of 1996 before H.P. Administrative Tribunal Shimla camp at Mandi but he was not re-engaged. He suffered from sciatica in his right leg *w.e.f.* 1-6-1996 to 28-10-1998 and he got treatment from different medical practitioners and thereafter submitted his fitness certificate to the department in the month of March 1998 but he was not reinstated by the department till April, 2009. The respondent had not served any notice upon him at the time of termination of his services *w.e.f.* 1-5-1996 nor paid one month salary in lieu of notice period or retrenchment compensation to him. The State Government of Himachal Pradesh abolished Administrative Tribunal in the year 2008 and his OA was transferred to Hon'ble High Court and same was registered as CWP (T) No.7160 of 2008, which was decided by the Hon'ble High Court on 22-10-2010 whereby the Hon'ble High Court has granted liberty to him to approach the second respondent therein within one month for any

grievance still left and the second respondent was directed to take appropriate action in the matter. He had issued demand notice dated 10-2-2009 to the department before passing the aforesaid order by Hon'ble High Court. The copy of notice was forwarded to Labour-*cum*-Conciliation Officer Mandi where a settlement was effected between the parties on 17-3-2009 and authorized representative, the then Range Officer of the department Shri Hardev Gupta, agreed to reinstate him as forest worker as per his seniority within the jurisdiction of Joginder Nagar as per availability of work and he had agreed to work anywhere as per his seniority within the jurisdiction of Joginder Nagar Forest Division. As per settlement dated 17-3-2009, he was reinstated on 16-4-2009 and he presently is working under Range Officer, Urla. As per clause IV of settlement, he had again issued demand notice on 7-6-2010 for regularization, but he has withdrawn the same as per assurance given by the department. He again filed CWP No. 2697 of 2012-J before Hon'ble High Court for granting him seniority and regularization of his services *w.e.f.* 1-1-1997. Hon'ble High Court has decided the said writ petition on 8-5-2012 and the second respondent therein was directed to take a decision in his case in accordance with law without discriminating him within a period of two months from the date of production of copy of judgment along with copy of writ petition. Thereafter he submitted copy of judgment as well as writ petition in the office of DFO Joginder Nagar, but no action was taken by the department. After lapse of more than three years, Additional Secretary (Forests) Govt. of H.P. wrote a letter No.FFE-A(E) 2-594 of 2012 dated 9-6-2015 to Principal Chief Conservator of Forests, Shimla -1 whereupon Principal Conservator of Forest wrote letter No. Ft. HB(15)258/2012-(E-III) dated 2nd January, 2016 to Conservator of Forest Mandi for acceptance of his medical certificate from 1.6.1996 to 28.10.1998. Thereafter DFO Joginder Nagar vide letter No.8459 dated 27.2.2016 requested Chief Medical Officer, Mandi to examine his medical certificates issued by various practitioners as well as Government Ayurvedic Hospital and also directed him through Range Officer Urla to appear before the Medical Board and he appeared before the Medical Board. Thereafter he vide letter No.3869 dated 17.2.2016 appeared before the DFO Joginder Nagar for personal hearing on 19.9.2016. Thereafter his case for seniority on medical ground and as per settlement before Conciliation Officer Mandi dated 17.3.2009 was rejected by the department vide office order No.142/2016/17 dated 24.9.2016. He had not willfully absented from duty w.e.f. 1.5.1996 to 28.10.1998; rather he was undergoing medical treatment and thereafter he was not allowed to join his duties. The DFO Joginder Nagar has not referred to the opinion of Medical Board while rejecting his case for seniority and thus the DFO Joginder Nagar has discriminated him. He is working w.e.f. 17.4.2009 as per settlement dated 17.3.2009 under Forest Range Officer, Urla without any break as daily wage forest worker and he has completed more than 240 days from 1987 to 1995 and thereafter from 16.4.2009 onwards and thus is entitled protection under Section 25-F of the I.D. Act. The mandays chart from 17.4.2009 to September 2016 has not been properly submitted by Range Officer as he has shown to have worked for less than 240 days in each calendar year whereas he never absented from his duties. The respondent while terminating his services retained person junior to him namely Hari Singh, Rattan Chand, Chet Ram, Govind Ram, Hem Kant, Surat Ram, Raj Kumari, Roshan Lal, Sarpa Devi, Sahnu Ram and Shyam Singh in service and he was not allowed to join duty w.e.f. April, 1996 to 15.4.2009 whereas the work and funds were available with the department. Services of the aforesaid workers have been regularized by the department from time to time after completion of 10 years as per policy framed by the State Government and as such he is entitled to be regularized after completion of 10 years on 1.1.1997. Despite settlement dated 17.3.2009 before Conciliation Officer, Mandi, he was given breaks in his services without written order and he sometime was engaged on muster roll basis and sometime on bill basis. As per the mandays chart submitted by Range Forest Officer, Urla vide letter No.367/U dated 27.9.2016, he has not been allowed by the respondent to work for full month and he is shown to have worked for less than 240 days from 2009 onwards, whereas persons juniors to him namely, Sapra Devi, Nirmla, Shyam Singh, Love Kumar, Krishna Devi, Brahmi Devi were retained without any break and they have been regularized. Hence the petition.

4. The petition has resisted by the respondent by filing reply taking preliminary objections qua maintainability and the claim being bad on account of delay and laches. On merits, it

has been averred that the petitioner was engaged as casual daily wage labourer and not as Chowkidar in September 1987 for doing various forest operations as per requirement in the Range and he intermittently worked with the department till April, 1996. In April, 1996, the petitioner was asked to work in Silhaswar nursery where work was available, but he did not report for duty in the nursery. The petitioner filed OA No. (M) 377/1996 before the Hon'ble Administrative Tribunal camp at Mandi and thereafter he never reported for duty nor informed the department about his illness upto the year 1998. On 30.10.1998 the petitioner submitted an application intimating that he was ill and could not attend work due to his illness with medical certificate issued by various medical practitioners as well as Ayurvedic Hospital from 1.6.1996 to 20.10.1998. Due to cessation of work and exhaustion of funds, he could not be put on work during September 1998. After that he never approached for his engagement on daily wages. His services were never terminated. OA No.(M) 377/1996 was dismissed by the Hon'ble Administrative Tribunal on 4/2017. The forest works like plantation, fire protection and soil moisture conservation work carried out by the department are mostly seasonal as well as site specific works and therefore the department used to employ the labour on the basis of seasonal requirement for its work which also depends upon funds allocated to carry out the work. The daily wage workers are not engaged against any regular vacancy and there is no post of casual labour in the forest department. No regular budget is allocated for the wages in the annual budget of the department. Wages are being paid to the workman out of the funds earmarked for the works for which they are deployed depending upon the workload and scope of the work. The petitioner has filed another OA No.374/2000 before Hon'ble Administrative Tribunal Shimla camp at Mandi on 5.9.2000 with the prayer to take his joining and also to count period of his illness for the purpose of seniority. After abolition of Administrative Tribunal, the said OA was transferred to Hon'ble High Court which was registered as CWP (T) No.7160/2008 which was decided by Hon'ble High Court on 22.10.2010. During pendency of the said writ petition, the petitioner issued demand notice dated 10.2.2009 to the DFO Joginder Nagar and copy thereof was sent to Labour-cum-Conciliation Officer, Mandi. On 17.3.2009, a settlement arrived at between the parties and thereafter petitioner was reinstated and he reported for duty on 16.4.2009 and since then he is working. The petitioner again issued the demand Notice dated 7.6.2010 to DFO Joginder Nagar to regularize of his services and copy thereof was sent to Labour-cum-Conciliation Officer, Mandi in continuation of demand notice dated 10.2.2009. Hon'ble High Court vide order dated 22.10.2010 passed in CWP (T) No.7160/2008 directed the petitioner to approach the second respondent therein for taking appropriate action in case he still had any grievance left. It has also been averred that Range Forest Officer Hardev Gupta had agreed to reinstate the petitioner at his own level without getting any instructions from the department. It has been denied that as per the assurance given by the department, the petitioner had withdrawn his demand notice. It has also been denied that Hon'ble High Court has decided the CWP No.2697 of 2012-J on 8.5.2012 with the directions to give seniority from the date when the petitioner was entitled for regularization i.e. w.e.f. 1.1.1997 and to consider the case of the petitioner as per the judgment of Hon'ble High. It has also been denied that the petitioner remained under medical treatment from 1.5.1996 to 28.10.1996 and he was not allowed to resume his duty. It has been averred that the petitioner had left the work in May 1996 at his own sweet will and he had not completed 240 days in preceding 12 calendar months and has not fulfilled the condition of Section 25-B of the I.D. Act and as such there was no need to serve any notice upon him. The petitioner had not reported for duty/work from May, 1996 to March, 2009 and thereafter as per settlement, he was engaged w.e.f. April, 2009. The petitioner has been working intermittently w.e.f. April, 1996 and has not completed 240 days in any calendar year except the year 2014. It has also been denied that the mandays from 17.4.2009 to September 2016 has not been properly submitted by the Range Forest Officer. It has further been averred that the workmen Hari Singh, Rattan Chand, Hem Kant, Raj Kumari and Roshan Lal continuously worked with the department. Shanu Ram never worked with the department and Nirmla Devi and Shyam Singh were engaged on compassionate ground as per policy of the Government. The workmen, who have fulfilled conditions as per Government policy, have been regularized. Sarpa, Love Kumar, Krishna and Bramhi Devi were engaged as per

orders of this court and fresh hand was engaged by the respondent at his own level. The services of the petitioner were neither terminated nor any fictional breaks were given in his services. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 01.7.2018:—

1. Whether time to time termination of services of the petitioner by the respondent during April, 1996 to 15-04-2009 is/was legal and justified as alleged?

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*

3. Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*

4. Whether the petition is bad on the ground of delay and latches as alleged? ..*OPR*

Relief.

7. The petitioner was called upon to lead evidence. The petitioner besides himself has examined Sh. Krishan Kumar, posted as Sr. Assistant in the office of DFO Joginder Nagar as PW2 and closed the evidence.

8. On the other hand the respondent has examined Divisional Forest Officer, JoginderNagar Sh. Rajeev Kumar as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, the findings on the above issues are as under:—

Issue No.1	:	No
Issue No.2	:	Regularization of service
Issue No.3	:	No
Issue No.4	:	No
Relief.	:	Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It is not in dispute between the parties that the petitioner was engaged by the respondent in the year 1987. The petitioner has claimed that he was engaged as chowkidar in

Watch and Ward Check Post Ghatashni w.e.f. 20.4.1987 and he continuously worked till April, 1996 whereas the respondent has averred that the petitioner was engaged as casual daily wage labourer and not a chowkidar in September 1987 and he intermittently worked with the department till April, 1996.

13. The respondent has placed the mandays chart Ext. RW1/B of the petitioner on record. As per mandays chart the petitioner was engaged in the month of September 1987 and he worked upto April, 1996. He has worked for 50 days in the year 1987, 299 days in 1988, 345 days in 1989, 329 days in 1990, 358 days in 1991, 267 days in 1992, 290 days in 1993, 291 days in 1994, 269 days in 1995 and 90 days in the year 1996. Thus he has worked for more than 240 days in each calendar year except the years 1987 and 1996.

14. The petitioner has claimed that he continuously worked in Check Post Ghatasni till April 1996 thereafter he was transferred from check post Ghatasni to Shila-Swar nursery by the forest guard without any written order and he immediately reported to the then Range Officer Urla, however, the Range Officer did not allow him to work in the Check Post Ghatasni and his name was struck off from the muster roll without any reason and he remained ill w.e.f. 1.6.1996 to 28.10.1998. He suffered from sciatica in his right leg and he got treatment from different medical practitioners and thereafter he submitted his fitness certificate to the department in the month of March, 1998 but he was not reinstated by the department till April, 2009.

15. The respondent, on the other hand, has averred that in April, 1996 the petitioner was asked to work in Shila-Swar nursery where work was available, but he did not report for duty in the nursery and thereafter he filed O.A. (M) 377 of 1996 before the Hon'ble Administrative Tribunal Shimla camp at Mandi and after that he never reported for duty nor informed about his illness upto the year 1998. On 30.10.1998, the petitioner submitted an application intimating that he was ill and as such he could not report for duty/work and he has also submitted medical certificate issued by various medical practitioners as well as Ayurvedic Hospital from 1.6.1996 to 28.10.1998 but he could be engaged due to cessation of work and exhaustion of funds in September, 1998. Thus the respondent has admitted that the petitioner has reported for duty with medical certificates issued by various medical practitioners on 30.10.1998 and he has duly intimated to the department with regard to his illness but he was not allowed to work or re-engaged due to cessation of work and exhaustion of funds as averred by the respondent.

16. It has also been admitted by the respondent that O.A. (M) No. 377/1996 filed by the petitioner, was dismissed by the Administrative Tribunal. It has been averred that petitioner had filed another O.A. No. 374/2000 before the Administrative Tribunal Shimla camp at Mandi on 5.9.2000 with the prayer to take his joining and also to count his illness period for the purpose of seniority but the Hon'ble Administrative Tribunal was abolished and O.A. was transferred to Hon'ble High Court which was registered as CWP (T) No.7160/2008 and was decided by the Hon'ble High Court on 22.10.2010. It has also been admitted by the respondent that the petitioner, before deciding the said writ petition, had issued demand notice dated 10.2.2009 to DFO Joginder Nagar and forwarded the copy of the same to Labour-cum-Conciliation Officer Mandi and on 17.3.2009 a settlement had arrived between the parties and as per settlement the services of the petitioner was reinstated on 16.4.2009 and since then he is not working with the respondent department.

17. It has also been admitted by respondent that the petitioner again issued demand Notice dated 7.6.2010 in continuation of his demand notice dated 10.2.2009 and the CWP (T) No. 7160/2008 filed by the petitioner was decided by the Hon'ble High Court vide judgment dated 22.10.2010 whereby the second respondent therein was directed to take appropriate action in case the petitioner still had any grievance left. It has also been admitted by the respondent that no notice

was served upon the petitioner before terminating his services, however, the respondent has taken a plea that the petitioner has not completed 240 days of service preceding 12 calendar months and he was not in continuous service as per the provisions of Section 25-B of the I.D. Act and as such there was no need to serve any notice upon him. However, Shri Rajeev Kumar Divisional Forest Officer while appearing as RW1 in his cross-examination he has admitted that the petitioner as per mandays chart Ext. RW1/B was engaged in September 1987 and he categorically has admitted that he has worked for 240 days from the year 1988 to 1995.

18. It has not been specifically denied by the respondent that after the settlement dated 17.3.2009, the petitioner has filed fresh demand notice as per clause IV of the settlement, however, it has been denied by the respondent that the notice was withdrawn by the petitioner as per assurance given by the respondent. It has been admitted by the respondent that the petitioner thereafter has filed CWP No.2697/2012 before Hon'ble High Court which was decided on 8.5.2012, however, the directions issued therein by the Hon'ble High Court have been disputed. The petitioner has not filed copy of judgment passed by the Hon'ble High Court in CWP No.2697/2012, but the respondent in order dated 24.9.2016 Ext. RW1/I, in para No.6 has written that the Hon'ble High Court vide judgment dated 8.5.2012 passed in CWP 2697/2012-J titled as Darshan Singh vs. State and Ors. directed the second respondent i.e. Respondent herein, to take decision in the case of petitioner in accordance with law without discriminating the petitioner, within a period of two months from the date of production of copy of judgment and the petitioner has submitted his representation dated 5.2.2013 as directed by the Hon'ble Court. Hence, it has been admitted by the respondent that the Hon'ble High Court vide judgment dated 8.5.2012 passed in CWP No.2697/2012-J has directed the respondent to take decision in the case of the petitioner as per law and the petitioner thereafter submitted his representation dated 5.2.2013.

19. Further proceedings in the matter have been detailed by the respondent in last five paras of the order dated 24.9.2016 Ext. RW1/I, which reads thus:—

> "…….
> Whereas in compliance to the judgment of Hon'ble High Court dated 08.05.2012 in CWP No.2 697 of 2012-J titled Darshan Singh V/s State and ors., under signed vide letter No.EStt/7079 dated 06.02.2013 requested the higher authorities seeking guidance/clarification as to whether the petitioner is entitled for seniority for the break period w.e.f. 1.6.1996 to 28.10.1998 on medical grounds and w.e.f. 29.10.1998 to 15.04.2009 in view of settlement arrived at in between the petitioner and the department before the Conciliation Officer-cum-Labour Offier, Mandi on 17.03.2009 as it is beyong the competency of undersigned to consider and assign seniority to the petitioner for the break period w.e.f. 1.6.1996 to 28.10.1998 on medical grounds.
>
> Whereas after processing the case at Govt. level with a chain of communication, Pr. CCF H.P. vide his office letter No.Ft. HB (15)258/2012 (E-III) dated 26.05.2016 and letter No.Ft. HB (15)258/2012 (E-III) dated 30.08.2016 directed second respondent that being one of the respondent, take appropriate action by passing a speaking order as per Court orders and in accordance with latest instructions of the Govt. after affording adequate opportunity of being heard to the petitioner.
>
> And whereas the petitioner Sh. Darshan Singh was given an opportunity of being heard and he appeared in person on 19.09.2016 and re-iterated contents of representation and writ petition as briefed.
>
> Whereas, the claim of the petitioner for assigning seniority to him for the break period w.e.f. 1.6.1996 to 28.10.1998 on medical grounds is not covered by the Govt.

instructions issued vide Pr. Secretary (Forests) to the Govt. of H.P. letter No.FFE-A(B) 101/2016 dated 18.06.2016 and as per the settlement arrived at in between the petitioner and the department before the Conciliation Officer-cum-Labour Officer, Mandi on 17.03.2009 the petitioner has been re-engaged but there is no commitment on the part of the representative of the undersigned for granting seniority to the petitioner for the period 29.10.1998 to 15.04.2009.

In view of the above, the undersigned has come to the conclusion that claim of the petitioner for assigning seniority to him for the break period w.e.f. 1.6.1996 to 28.10.1998 on medical grounds as well as to grant seniority to the petitioner for the period 29.10.1998 to 15.04.2009 in view of settlement arrived at in between the petitioner and the department before the Conciliation Officer-cum-Labour Officer, Mandi on 17.03.2009 is not justified, hence the representation of the petitioner dated 05.02.2013 is considered and rejected".

20. Thus, in the backdrop of the aforesaid admission and denial, what come to the fore is that the petitioner had worked with the respondent from September 1987 to April, 1996 and thereafter he was transferred from Check Post Ghatasni to Sila-Swar nursery, but as per plea of the petitioner, he immediately reproached the then Range Officer Urla, but he did not allow him to work in Check Post Ghatasni and his name was struck off from muster roll and thereafter he filed O.A. (M) No.377 of 1996 before Hon'ble Administrative Tribunal which was dismissed. The petitioner remained ill w.e.f. 1.5.1996 to 28.10.1998 and on 30.10.1998 he submitted medical fitness certificates issued by various medical practitioners as well as Ayurvedic Hospital from 1.6.1996 to 28.10.1998 but he was not re-engaged nor allowed to join his duty on the pretext of cessation of work and exhaustion of funds. Thereafter the petitioner filed O.A. No.374/2000 before Hon'ble Administrative Tribunal Shimla camp at Mandi on 5.9.2000 which after abolition of Administrative Tribunal was transferred to Hon'ble High Court which was registered as CWP (T) No.7160/2008 and was decided by the Hon'ble High Court vide judgment dated 22.10.2010 Ext. RW1/F but during the pendency of the aforesaid petition, the petitioner had issued demand notice dated 10.2.2009 Ext. PW1/B to the respondent and copy of the same forwarded to Conciliation Officer where settlement Ext. RW1/G arrived between petitioner and authorized representative of the department namely Sh. Hardev Gupta, Range Officer and Range Officer agreed to reinstate the services of the petitioner as per his seniority within the jurisdiction of Joginder Nagar Forest Division. The petitioner, as per settlement Ext. RW1/G arrived between the parties, joined duty on 16.4.2009, but seniority was not given to him as agreed upon and thereafter he again filed Writ Petition No.2697 of 2012-J before Hon'ble High Court which was decided by Hon'ble High Court vide judgment dated 8.5.2012 and the respondent was directed to take a decision in his case in accordance with law without discriminating him within a period of two months and the respondent vide dated 24.9.2016 Ext. RW1/I rejected the claim of the petitioner for granting him seniority w.e.f. 1.6.1996 to 28.10.1998 on medical grounds and 19.1.1998 to 15.4.2009 in view of settlement arrived between the parties on the ground that the claim of the petitioner for assigning seniority to him for the break period w.e.f. 1.6.1996 to 28.10.1998 on medical grounds is not covered by the Govt. instructions issued vide Pr. Secretary (Forests) to the Govt. of H.P. letter No.FFE-A(B) 101/2016 dated 18.06.2016 there was no commitment on the part of his authorized representative to grant seniority to the petitioner from 29.10.1998 to 15.4.2009.

21. The respondent, in his reply, has taken a plea that the authorized representative Hardev Gupta Range Officer had agreed to reinstate the petitioner at his own level without taking instructions from the department, however, the respondent in his order Ext. RW1/I, himself has referred him to be his representative and has written that there was no commitment on the part of his representative for granting seniority to the petitioner for period from 19.10.1998 to 15.4.2009 and thus the respondent has admitted that the then Range Officer Hardev Gupta was representative

of the department and the settlement Ext. RW1/G, admittedly was acted upon and the petitioner was reinstated as per settlement and he joined his duty on 16.4.2009. It would be evident from the perusal of the settlement Ext. RW1/G placed on record by the respondent that the copy of the same was sent to Labour Commissioner an officer authorized in this behalf by the State Government and thus the appropriate Government has also satisfied itself with regard to the legality of settlement and accepted the same as no reference was made for further adjudication.

22. The terms of the settlement Ext. RW1/G reads as under:—

> "D. TERMS OF SETTLEMENT:
>
> "1. The Employer/Management Side has stated that this is first date and reply is yet to be prepared, however Mr. Darshan Singh above has worked as Watch & Ward Worker and past details working periods is not available during the proceeding. The seniority of all Daily Wages workers/Beldar is made at Divisional Level. The above worker can be been employed as now designated 'Forest Worker' as per his seniority within the whole jurisdiction of Jogindernagar Forest Division, as per availability of work. He will be retrenched as per provisions of Section 25-F and reemployed as per provisions of Section 25-G&H of Ibid Act.
>
> 2. Mr. Darshan Singh above worker agrees to work anywhere, as per his seniority within the whole jurisdiction of Jogindernagar Forest Division, as per availability of work and it may be 8 kms or more, away from his permanent resident. He will report of duties on 16-04-2009 to the Forest Range Officer, Urla on 16-04-2009 at 09.00 A.M.
>
> 3. Both the parties to the Industrial Dispute agreed to above Terms of Settlement, Sr. No.1&2, therefore, this Industrial Disputes has been finally resolved.
>
> 4. The proceeding this case file are closed and the above Mr. Darshan Singh will file afresh demand notice after decision/withdrawal of the same from the Honorable High Court of Himachal Pradesh".

23. It is evident from the perusal of the terms of settlement quoted above that the representative of the respondent department Shri Hardev Gupta, Forest Range Officer, had agreed to employ the petitioner as per his seniority within whole jurisdiction of Jogindernagar and the petitioner had agreed to work anywhere as per his seniority within whole jurisdiction of Joginder Nagar. It is true that there is no reference of the period w.e.f. 1.6.1996 to 15.4.2009 in the settlement Ext. RW1/G , however, the respondent has settled thedispute during conciliation proceedings before Conciliation Officer, therefore, the respondent was bound to engage the petitioner with his seniority as per settlement.

24. Hon'ble Supreme Court in **Tata Chemicals Ltd vs Its Workmen 1978 AIR SC 828** in para Nos. 13 and 14 has held as under:—

> "13. A bare perusal of the above quoted section would show that whereas a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement, a settlement arrived at in the course of conciliation proceeding under the Act is binding not p only on the parties to the industrial dispute but also on other persons specified in Clauses (b), (c) and (d) of Sub-section (3) of Section 18 of the Act. We are fortified in this conclusion by a decision of this Court in Ramnagar

Cane and Sugar Co. Ltd. v. latin Chakravorty and Ors. [1960] 3 S.C.R. 960 where it was held as follows:

When an industrial dispute is thus raised and is decided either by settlement or by an award the scope and effect of its operation is prescribed by Section 18 of the Act. Section 18(1) provides that a settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement; whereas Section 18(3) provides that a settlement arrived at in the course of conciliation proceedings which has become enforceable shall be binding on all the parties specified in Clauses (a), (b), (c) and (d) of Sub-section (3). Section 18(3)(d) makes it clear that, where a party referred to in Clause (a) or (b) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part, would be bound by the settlement.... In order to bind the workmen it is not necessary to show that the said workmen belong to the Union which was a party to the dispute before the conciliator. The whole policy of Section 18 appears to be to give an extended operation to the settlement arrived at in the course of conciliation proceedings, and that is the object with which the four categories of persons bound by such settlement are specified in Section 18, Sub-section (3).

14. Similar view seems to have been held by another Division Bench of this Court in The Jhagrakhan Collieries (P) Ltd. v. Shri G. C. Agarwal, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur and Ors. [1975] 3 S.C.C. 613".

25. In the case in hand, as has been observed above, the settlement Ext. RW1/G was arrived at between the petitioner and the authorized representative of the respondent department namely Shri Hardev Gupta, Range Officer during conciliation proceedings before the Conciliation Officer which, in view of law laid down by Hon'ble Supreme Court in aforesaid case, is binding upon the respondent. Since as per settlement Ext. RW1/G, the respondent had agreed to employ the petitioner as per his seniority, the respondent shall be deemed to have regularized the absence period of the petitioner and he shall be deemed to be in continuous service from the date of his engagement *i.e.* September 1987 and thus the respondent was bound to regularize the services of the petitioner as per policy of the Government.

26. This apart, the petitioner has led cogent evidence on the record to prove the fact that his absence from 1.5.1996 to 16.4.2009 was not willful; rather he was not allowed to work or his services were illegally terminated w.e.f. 1.5.1996 and remained ill w.e.f. 1.6.1996 to 28.10.1998 and he was not re-engaged by the respondent on 30.10.1998 when he reported for duty with medical fitness certificates for the period of his illness.

27. It is the admitted case of the respondent that the petitioner had worked with the respondent from September 1987 to April, 1996. The petitioner has alleged that he after his transfer to Shila-Swar, reported to the then Forest Range Urla, but he was not allowed to work and his name was struck off from the muster roll. The respondent has taken plea of abandonment of work by the petitioner. As per plea of the respondent, the petitioner was asked to work in Sila-Swar Nursery in April, 2009 where work was available but he did not report for duty.

28. The respondent thus has taken plea of abandonment of work by the petitioner. It is fairly settled that the plea of abandonment of work is to be proved by the employer. Hon'ble High

Court in **CWP No.3634 of 2009** titled as **Narain Singh vs. The State of Himachal Pradesh &Ors.** decided on 21.6.2016, has held that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Hon'ble High Court in **State of H.P. and Anr. vs. Partap Singh, 2016(6)ILR (HP) 1314** has held that it is settled that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer and even if, it is presumed that the workman had abandoned the job himself and the same is a gross misconduct, in that case some disciplinary inquiry should have been initiated against the workman and the employer has to prove the same by leading evidence.

29. In the case in hand the respondent has not led cogent evidence on record to prove the abandonment of work by the petitioner. DFO Rajeev Kumar appeared as RW1 and filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered documents i.e. mandyas chart of petitioner Ext. RW1/B, Award dated 13.1.2005 Ext. RW1/C, copy of letter dated 14.5.1995 Ext.RW1/D, copy of order dated 4.12.2007 in OA (M) No.377/1996 Ext. RW1/E, copy of order dated 22.10.2000 in CWP (T) No.7160 of 2008 Ext. RW1/F, copy of settlement dated 17.3.2009 Ext. RW1/G, copy of letter dated 15.9.2010 Ext. RW1/H, copy of letter dated 24.9.2016 Ext. RW1/I, copy of letter dated 27.9.2008 Ext. RW1/J, copy of letter dated 28.10.2017 Ext. RW1/K and copy of letter dated 16.12.2015 Ext. RW1/L1 & L2 in evidence. In his cross-examination, he has denied that the Range Officer, Urla did not allow the petitioner to work on 1.5.1996 and terminated his services. He has also stated that the petitioner was transferred to Shila-Swar Nursery but he did not report for duty. But he has admitted as per record no correspondence was made with the petitioner with regard his willful absence and asking him to join his duty. He has also admitted that as per record neither petitioner was ever charge-sheeted nor show cause notice was issued to him nor inquiry was conducted nor any retrenchment compensation was paid to him. Thus it is evident that the respondent has neither issued any show cause notice to the petitioner for his alleged willful absence from the duty nor any disciplinary inquiry was ever initiated against him.

30. There is also nothing in the evidence of petitioner from which it could be inferred that he willfully absented from duty or he himself abandoned the work. The petitioner Darshan Singh appeared as PW1 and filed affidavit Ext. PW1/A in his examination-in-chief wherein he has affirmed all the averments made in the claim petition. He has also tendered documents i.e. copy of demand notice dated 10.2.2009 Ext.PW1/B, copy of demand notice in continuation dated 7.6.2010 Ext.PW1/C, copy of representation dated 15.11.2010 Ext.PW1/D, copy of letter dated 28.9.2011 Ext.PW1/E, copy of letter dated 5.3.2013 Ext.PW1/F, copy of mandays chart 1987 to 2009 Ext. PW1/G, copy of letter No.4726 dated 23.8.2013 Ext. PW1/H, copy of letter No.4727 dated 23.8.2013 Ext.PW1/I, copy of letter dated 9.6.2015 Ext.PW1/J, copy of letter dated 5.3.2013 Ext. PW1/K, copy of letter dated 29.4.2013 Ext.PW1/L, copy of letter dated 18.7.2013 Ext.PW1/M, copy of letter dated 27.7.2015 Ext.PW1/N, copy of letter No.2716 Ext.PW1/O, copy of letter dated 2.1.2016 Ext.PW1/P, copy of letter dated 17.9.2016 Ext.PW1/Q, copy of demand notice dated 6.10.2016 Ext.PW1/R and copy of seniority list Mark-A (4 leaves) in evidence. He, despite his lengthy cross-examination, has denied that in April, 1996, the department had asked him to report for duty in Shila-Swar Nursery where work was available but he did not report for duty there. He has admitted that he has filed O.A. No.377/1996 before the Administrative Tribunal Shimla camp at Mandi in the year 1996 but he has again denied that he did not approach the department to engage him. He has denied that the respondent had not given break in his services but he himself had abandoned the work.

31. The petitioner has also examined Shri Krishan Kumar posted as Senior Assistant in the office of respondent as PW2, who has proved the mandays charts of Meera Devi Exts. PW2/A & PW2/B, copy of seniority list Ext. PW2/C, corrigendum dated 6.6.2016 Ext. PW2/D and another seniority list of daily wagers Ext. PW2/E on record.

32. Thus it is evident from the resume of the evidence of both the parties discussed supra that the respondent except bald statement of RW1 has not led any evidence on record to prove the abandonment of work by the petitioner. The respondent has filed copy of order dated 4.12.2007 Ext.RW1/E passed in OA No.(M) 377/1996 by the Hon'ble Administrative Tribunal on record whereby the application moved by the petitioner for setting aside the order of his transfer and seeking other reliefs was dismissed. The perusal of order dated 4.12.2007 Ext.RW1/E would show the respondent has also not taken plea of abandonment of work by the petitioner before the Administrative Tribunal and there is nothing in the evidence of petitioner PW1 from which it could be inferred that he had the abandoned the work, therefore, the plea of the respondent that the petitioner himself had left the work cannot be accepted and the evidence of the petitioner that he was not allowed to work and his name was struck off from muster roll has to be accepted to be correct. Consequently, it is held that the services of the petitioner were illegally terminated by the respondent *w.e.f.* 1.5.1996.

33. It is admitted case of the respondent that on 30.10.1998, the petitioner submitted his application intimating that he was ill and he could not report for duty/work due to his illness and he has submitted medical certificates issued by various medical practitioners as well as Ayurvedic Hospital w.e.f. 1.6.1996 to 28.10.1998, however, due to cessation of work and exhaustion of funds he could not be re-engaged, which in turn proves on record that the petitioner has reported for duty on 30.10.1998 and has also informed about his illness w.e.f. 1.10.1996 to 28.10.1998 to the respondent and had submitted medical certificates for the said period.

34. The petitioner has produced on record one letter dated 5.3.2013 Ext. PW1/F written by CF Mandi to Principal CCF, H.P. Shimla. As per letter Ext. PW1/F, on 30.10.1998 the petitioner submitted an application informing that he was ill and could not come to work due to his illness and also submitted medical certificates from various private medical practitioners as well as Government Ayurvedic Hospital w.e.f. 1.6.1996 to 28.10.1998 but due to cessation of work and exhaustion of funds, he could not put to work in the month of November 1998 and thereafter he did not approach the respondent for his engagement on daily wages.

35. It is not the case of the respondent that the medical certificates produced by the petitioner before the department were not issued by authorized medical practitioners or the same were false or fabricated or that the petitioner was not suffering from illness of this nature. The department had processed the same to regularize the period of absence the petitioner on medical ground, but the same could not come to a logical end. As per letter Ext. PW1/H written by CF Mandi to Principal CCF Shimla, a request was made to grant seniority and continuity in service to the petitioner for the period from 1.6.1996 to 28.10.1998 on medical grounds for which the petitioner had submitted medical certificates obtained from various private medical practitioners as well as Government Ayurvedic Hospital. As per letter Ext. PW1/P dated 2.1.2016 written by Pr. CCF, HP to CF Mandi, the petitioner was directed to be got medically from Medical Board for the disease he was suffering from and about his fitness to Govenrment Job and to justify his absence. Letter Ext. PW1/O was written by DFO Joginder Nagar to the Chief Medical Officer Mandi 27.02.2016 to get the petitioner medically examined from Medical Board with regard to his alleged ailment. No document has been placed on record to show that any Medical Board was constituted and report was obtained. The department thus not led any evidence on record to show that the petitioner was not suffering any such ailment nor this fact was got verified from the Medical Board. The medical certificates have been produced as Ext. RX/A to Ext. RX/A-4 on record. The respondent, at any stage, had neither held that the medical certificates submitted by the petitioner were false or the same were not issued by any authorized medical practitioners nor got the petitioner medically examined from Medical Board and thus accepted the same to be genuine and relied upon the same. The respondent vide order Ext. PW1/I has shown his inability to regularize the period w.e.f. 1.6.1996 to 28.10.1998 on medical grounds as it was not covered under

instructions issued by the Government. But no such instructions have been placed on record. In nutshell, the aforesaid medical certificates produced by the petitioner have not been challenged by the respondent, therefore, it can safely be held that the petitioner remained ill and could not report for duty from 1.6.1996 to 28.10.1998 due to his illness.

36. As per provisions of Section 25-B of the I.D. Act the workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

37. In the case in hand, the continuity in service of the petitioner from 1.6.1996 to 28.10.1998 was uninterrupted by his illness, which was beyond his control and after his recovery and declaring him fit to join the duty by the various medical practitioners, he reported for the duty on 30.10.1996, however, he was not allowed to work or re-engaged by the respondent, therefore, it cannot be held that the petitioner remained willfully absent during the period from 1.6.1996 to 28.10.1998 and thus the period from 1.6.1996 to 28.10.1998 is liable to be counted towards continuity in service and seniority purposes which was also protected in the settlement Ext. RW1/G arrived between the parties, which was acted upon and attained finality as it was never challenged by the department before any court of law.

38. So far as second break period i.e. from 1.11.1998 to 15.4.2009 is concerned, it is the admitted case of the respondent that the petitioner had reported for the duty on 30.10.1998, however, he allegedly was not re-engaged on account of cessation of work or lack of funds and therefore it cannot be concluded that the petitioner willingly or intentionally absented from the duty from 1.11.1998 to 15.4.2009; rather he was not allowed to join the work. The respondent has also taken a plea that the petitioner did not report for duty after 30.10.1998, however, it was for the respondent to call him but admittedly he was not called by the respondent nor any notice was served upon him. The petitioner did not remain silent but filed Original Application No. 377/2000 before the Hon'ble Administrative Tribunal within period of two years for directing the respondent to take his joining and to counting the period of illness for the purpose of seniority which was contested by the respondent and after abolishing of Administrative Tribunal, O.A. was transferred to Hon'ble High Court which was registered as CWP (T) No.7160/2008 and was decided by the Hon'ble High Court on 22.10.2010 whereby the petitioner was granted liberty to approach the respondent within one month if he still had any grievance left. The petitioner during pendency of the said writ petition had issued demand notice to the respondent in which a settlement Ext. RW1/G had arrived at between the parties and the petitioner as per settlement had joined the duty on 16.4.2009 but, the respondent did not grant him seniority and regularized his services and therefore the petitioner again filed Writ Petition i.e. CWP No.2697/2012 before the Hon'ble High Court which was decided by the Hon'ble High Court vide judgment dated 8.5.2012 whereby the respondent was directed to take decision in the case of the petitioner without discriminating him within a period of two months and the respondent ultimately rejected the case of the petitioner vide order dated 24.9.2016 Ext. RW1/I on the ground that the break period from 1.6.1996 to 28.10.1998 on medical ground is not covered by the government instructions and there was not commitment on the part of his representative for granting seniority from 29.10.1998 to 15.4.2009, which reasons assigned by the respondent, as per my observations, are contrary to the terms of settlement Ext. RW1/G. Since the services of the petitioner were illegally terminated w.e.f. 1.5.1996 and thereafter he remained absent from 1.6.1996 to 28.10.1998 due to his illness which period, as per my observations, is to be counted for the purpose of seniority and continuity in service and thereafter the respondent did not allow the petitioner to join his duty on 30.10.1998 till 15.4.2009 and the respondent vide settlement Ext. RW1/G had agreed to employ the petitioner with seniority, the petitioner should have been re-engaged with seniority. Hence, the termination of the

petitioner is liable to set aside and the absence period w.e.f. 1.5.1996 to 15.4.2009 is liable to be counted for the purpose of continuous service and seniority and the petitioner shall be deemed to be in continuous service from 1.5.1996 and shall be entitled for regularization of his services as per the policy of the State Government as applicable at the relevant time except back wages as he admittedly had not worked during said period nor claimed or agreed to be given in settlement Ext. RW1/G.

39. The respondent has alleged that the claim of the petitioner is bad on account of delay and laches. Hon'ble Supreme Court in **Prabhakar Vs. Joint Director Sericulture Department and others 2015 (15) SCC 1** has held that no period of limitation is prescribed under 'the I.D.Act' for making reference under Section 10(1) of 'the I.D.Act' but if the dispute is raised after a long period, it is to be seen whether such a dispute still exists and if the court finds that the dispute exists, it is open for the court to take the aspect of delay into consideration and mould the relief.

40. In the case in hand, as has been observed above the respondent has illegally terminated the services of the petitioner on 1.5.1996 and the petitioner remained ill w.e.f. 1.6.1996 to 28.10.1998 and thereafter respondent did not allow the petitioner to join the work/duty on 30.10.1998 and thereafter the petitioner has filed Original Application before the Hon'ble Administrative Tribunal which after abolition of Administrative Tribunal was transferred to Hon'ble High Court which was registered as CWP (T) No.7160/2008 and was decided vide order dated 22.10.2010 Ext. RW1/F and during pendency of the said writ petition, the petitioner had issued demand notice to the respondent in which a settlement Ext. RW1/G had arrived at between the parties and the petitioner as per settlement had joined the duty on 16.4.2009 but, the respondent did not grant him seniority and regularized his services and therefore the petitioner again filed Writ Petition i.e. CWP No.2697/2012 before the Hon'ble High Court which was decided by the Hon'ble High Court vide judgment dated 8.5.2012 and the respondent ultimately rejected the claim of the petitioner vide order dated 24.9.2016 Ext. RW1/I and the petitioner filed present petition on 16.8.2017 and therefore, the petition cannot be said to be bad on account of delay and laches. Hence issue No.1 partly and issue No.2 are decided in favour of the petitioner and issue No.4 is decided against the respondent and are answered as such.

Issue No. 3

41. In view of my findings on the issues No.1 and 2, the petition is maintainable. Hence this issue is decided against the respondent and is answered in negative.

Relief

42. In view of my findings returned on issues No.1 and 2 above, the claim petition is partly allowed. The termination of the petitioner w.e.f. 1.5.1996 is set aside and the period w.e.f. 1.5.1996 to 15.4.2009 is ordered to be counted for the purpose of seniority of the petitioner. The petitioner shall be deemed to be in continuous service from 01.05.1996 and the services of the petitioner are ordered to be regularized as per policy of the State Government applicable at the relevant time with all consequential service benefits including seniority from the date of his initial engagement except back wages. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

43. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 5th day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

_____

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-*Industrial Tribunal, Dharamshala under Section 19 of the Legal Services Authorities Act, 1987 (Central Act)]*

Applicant : Sh. Vivek Gill s/o Late Shri Somdutt Gill, r/o Balmiki Colony, Dharamshala District Kangra, H.P.

Respondent(s) : i. The Director, M/s Vishal Protection Force, Municipal Corporation Dharamshala, District Kangra, H.P.

ii.The Supervisor Head, M/s Vishal Vishal Protection Municipal Corporation Dharamshala, Distt. Kangra, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 114/2021

Present:-

Applicant : Smt. Pabna Sharma, Ld. Legal Aid Counsel
Respondent : Sh. Nitin Paul, Ld. Advocate

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

The petitioner vide his separate statement has stated that he has effected compromise with the respondent and as per compromise he has been re-engaged in service and therefore he does not want to pursue this case and case be decided as per compromise.

The respondent No.2 vide his separate statement has stated that he has heard the statement of the petitioner which is corrected and they have re-engaged him in service.

Therefore in view of the statements of both the parties, the present petition is allowed being compromised as per settlement. The reference is answered accordingly. The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Member:
B.S.Pathania

Announced: 09.12.2023

Judicial Officer
(Naresh Kumar)

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19 of the Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Aakash s/o Shri Madan Lal, r/o
VPO Palakwah, Tehsil Haroli, District Una, H.P.
through
the President/ General Secretary,
Stanford Laboratories Mazdoor Sangh,
Mehatpur, Tehsil and District Una, H.P.

Respondent(s) : The Managing Director, M/s Stanford Laboratories Private Limited,
Industrial Area Mehatpur, District Una, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 18/2023

Present:-

Applicant : Sh. Rajat Chaudhary, Ld. Advocate
Respondent : Sh. Mukul Vaid, Ld. Adv. Vice

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

The petitioner vide his separate statement recorded on 6.11.2023 has stated that he has effected compromise with the respondent and he has resigned from the service and has received a sum of Rs.83,323/- (Rupees Eighty three thousand three hundred twenty three Only) as full and final settlement and as such he withdraws the present statement of claim/reference.

Hence, in view of the statement of the petitioner, the claim petition is dismissed as withdrawn being compromised. The reference is answered accordingly.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Member:
B.S.Pathania

Announced: 09.12.2023

Judicial Officer
(Naresh Kumar)

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM **- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 111/2019

Date of Institution : 19-10-2019

Date of Decision : 23-12-2023

Shri Man Singh s/o Shri Sunder, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. *.....Petitioner.*

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bagheigarh, Tehsil Churah, District Chamba, H.P. *....Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv.
For the respondent(s) : Sh. Nitin Gupta, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

> "Whether oral termination of services of Shri Man Singh s/o Shri Sunder, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. by the Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW, Site Office V.P.O. Baheigarh, Tehsil Churah, District Chamba, H.P. w.e.f. 15-06-2018, after paying retrenchment compensation amounting to Rs.93,636/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as Surveyor by the respondent without any appointment letter on 01.09.2011. After his engagement an official of the company had executed Affidavit on 31.12.2012 for providing job to

him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs.3800/- as salary and he was receiving Rs.7888/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 1.1.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full devotion and thus the verbal order of termination of his services is illegal, highly unjustified and also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action. On merits, it has been admitted that the petitioner was engaged as Supervisor on 1.9.2011, however, it has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed by the petitioner, but the petitioner failed to execute the Sale Deed and his land was not used by the company for any purpose. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue pressure so that the construction work might not hamper. The said affidavit is void document and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period. The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in accordance with law. A sum of Rs. 93,636/- was paid to the petitioner vide cheque No. 730325 dated 15.06.2018. It has been denied that fresh hands were engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company, the retrenched workmen will be given priority for appointment,if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:—

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? ..*OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue no.1 is held in affirmative and issue no.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? ..*OPP*

4. Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of "factory" as per the provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the

petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D.Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contention aised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. The petitioner has claimed that he was engaged as Surveyor whereas the respondent has claimed that he was engaged as Supervisor which fact is also evident from various documents including seniority list and order dated 14.6.2018 Ext. RW1/B placed on record and the petitioner in rejoinder has also not disputed this fact. Thus it is not in dispute between the parties that the petitioner was engaged as supervisor by the respondent on 1.9.2011 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment w.e.f. 15.6.2018 and he has also pleaded that the respondent has not disclosed his actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter on 1.9.2011 and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D.Act as neither the respondent has issued one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to him were retained and principle of 'last come first go' was violated by the respondent and the respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017

and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.93,636/- vide cheque No.730325 dated 15.6.2018 and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Man Singh, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B and copy of mandays chart Ext. PW1/C in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017. He has denied that the office order was published by affixation in the office complex. He has also admitted that he has admitted that a sum of Rs.93636/- was deposited by the company in his account on 10.07.2018.

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account of respondent Ext. RW1/D, copy of envelop Ext. RW1/E, full and final settlement letter Ext. RW1/F and resolution Ext. RW1/G in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 1.9.2011 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent. The affidavit Ext.PW1/B has not been assailed by the respondent in any court till date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser as the land of the petitioner was not used for any purpose by the company and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.5 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure, the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that a sum of Rs.5100 as one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The petitioner Man Singh PW1, in his cross-examination, has admitted that a sum of Rs.93,636/- was deposited by the company in his account on 10.07.2018. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment compensation. However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of his service and has also added a sum of Rs.5100/- only as one month's wages of the notice period, the sum total whereof is Rs.93,636/- and the petitioner has admitted receipt of the same. It would also be evident from the perusal of detail of retrenchment benefits Ext. RW1/C that the basic pay of the petitioner has been shown Rs.7625/- and a sum of Rs.5100/- only has been paid as notice period salary and thus one month wages were not paid to the petitioner. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of receipt of sum of Rs.93,636/- by the petitioner (PW1), it is established on record that the respondent has paid the retrenchment compensation to the petitioner on 10.7.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent but one full month's wages in lieu of the notice period were not paid to him. Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs. 93,636/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D.Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

> **25K. Application of Chapter V-B.—** (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.
> (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

> "25L.**Definitions**:—
> For the purposes of this Chapter,
>
> (a) "industrial establishment" means;
>
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
>
> (ii) a mine as defined in clause (i) of sub- section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or
>
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);
>
> (b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,
>
> (i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or
>
> (ii) in relation to any corporation [not being a corporation referred to in subclause (i)

of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen** :—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently)in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

"2(m) "Factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952)], or [11][a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

"2(k) "Manufacturing process" means any process for:

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or

substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or;

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of Factories Act and thus Section 25-N of Chapter VB of I.D.Act shall apply to the present case and the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permission from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma v/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391. The facts of that case were that the workman was given notice dated 15.11.1958 for termination

of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:

The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.

[15] In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

[16] The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop Sharma's case supra,** the respondent was required to pay the wages of notice period as well as retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had not paid one full month's wages in lieu of notice period and had paid retrenchment compensation to the petitioner on 10.07.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D.Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case isvitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent while terminating his services and thereby violated the principle of 'last come first go' and the persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. It is admitted case of the parties that the petitioner was engaged as Supervisor on 1.9.2011 and he has been shown at serial No.122 in the seniority list Ext. PA. It would be evident from perusal of Ex.PA that all the supervisor were not retrenched by the respondent . Supervisor Chuhru Ram shown at Sr.No.121 engaged on 30.11.2011 after the engagement petitioner on 01.09.2011 was retained by the respondent while terminating the services of petitioner w.e.f. 15.6.2018 and thereby violated the principle of 'last come first go'. Hence, violation of Section 25-G of the I.D.Act is proved,

42. The petitioner, however, has not led cogent evidence on record to prove that fresh hands were engaged after his retrenchment and therefore the petitioner has failed to prove violation of Section 25-H of the I.D.Act.

43. The petitioner thus has proved that the respondent has retrenched him in contravention of the provisions of Sections 25-N or Section 25-F and 25-G of the I.D. Act and therefore the retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

44. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324** has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

45. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity in service along-with all the consequential service benefits including seniority and back wages. The amount of retrenchment compensation already paid by the respondent to the petitioner shall be adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

46. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

(NARESH KUMAR)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala,H.P.

IN THE COURT OF SH. NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No.	**:**	**117/2019**
Date of Institution	**:**	**19.10.2019**
Date of Decision	**:**	**23.12.2023**

Shri Kamal Dev s/o Shri Chatro Ram, r/o VPO Tikrigath, Tehsil Churah, District Chamba, H.P. .....*Petitioner* .

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bagheigarh, Tehsil Churah, District Chamba, H.P. ....*Respondent* .

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. O.P.Bhardwaj, Ld. Adv.
For the respondent(s) : Sh. Nitin Gupta, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

> "Whether oral termination of services of Shri Kamal Dev s/o Shri Chatro Ram, r/o VPO Tikrigath, Tehsil Churah, District Chamba, H.P. by the Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW, Site Office V.P.O. Bagehigarh, Tehsil Churah, District Chamba, H.P. w.e.f. 15-06-2018, after paying retrenchment compensation amounting to Rs.1,05,015/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as Supervisor by the respondent without any appointment letter on 01.09.2011. After his engagement an official of the company had executed Affidavit on 31.12.2012 for providing job to him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs.4500/- as salary and he was receiving Rs.12,000/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 1.1.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full devotion and thus the verbal order of termination of his services is illegal, highly unjustified and also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action. On merits, it has been admitted that the petitioner was engaged as Supervisor on 1.9.2011, however, it has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed by the petitioner, but the petitioner failed to execute the Sale Deed and his land was not used by the company for any purpose. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue pressure so that the construction work might not hamper. The said affidavit is void document and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period. The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in accordance with law. A sum of Rs.1,05,015/- was offered to the petitioner vide cheque No. 730326 dated 15.06.2018,but the petitioner refused to receive the same and as such the amount was transferred to his salary account on 10.07.2018. It has been denied that fresh hands were engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company, the retrenched workmen will be given priority for appointment, if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:-

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? ..*OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue no.1 is held in affirmative and issue no.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? ..*OPP*

4. Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of "factory" as per the provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D.Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contention raised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. It is not in dispute between the parties that the petitioner was engaged as Supervisor by the respondent on 1.9.2011 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment w.e.f. 15.6.2018 and he has also pleaded that the respondent has not disclosed his actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter on 1.9.2011 and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D.Act as neither the respondent has issued one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to him were retained and principle of 'last come first go' was violated by the respondent and the respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017 and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.1,05,015/- vide cheque No.730326 dated 15.6.2018 which was deposited in his salary account on 10.07.2018 and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Kamal Dev, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B and copy of mandays chart Ext. PW1/C in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017. He has denied that the office order was published by affixation in the office complex. He has admitted that a sum of Rs.1,05,015/- was deposited by the company in his account on 10.07.2018.

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account of respondent Ext. RW1/D, resolution Ext. RW1/E, letter dated 10.07.2018 Ext. RW1/F and receipt Ext. RW1/G in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 1.9.2011 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent.

The affidavit Ext.PW1/B has not been assailed by the respondent in any court till date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser as the land of the petitioner was not used for any purpose by the company and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.30 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure, the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that a sum of Rs.6300 as one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The petitioner Kamal Dev PW1, in his cross-examination, has admitted that a sum of Rs.1,05,015/- was deposited by the company in his account on 10.07.2018. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment

compensation. However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of his service and has also added a sum of Rs.6300/- only as one month's wages of the notice period, the sum total whereof is Rs.1,05,015/- and the petitioner has admitted receipt of the same. It would also be evident from the perusal of detail of retrenchment benefits Ext. RW1/C that the basic pay of the petitioner has been shown Rs.9435/- and a sum of Rs.6300/- only has been paid as notice period salary and thus one month wages were not paid to the petitioner. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of receipt of sum of Rs.1,05,015/- by the petitioner (PW1), it is established on record that the respondent has paid the retrenchment compensation to the petitioner on 10.7.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent but one full month's wages in lieu of the notice period were not paid to him. Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I,.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs.1,05,015/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D.Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

> **25K. Application of Chapter V-B.-** (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.
>
> (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

"25L.**Definitions**:—

For the purposes of this Chapter,

(a) "industrial establishment" means;

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (i) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in subclause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen** :—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

"2(m) "Factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952)], or [11][a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

"2(k) "Manufacturing process" means any process for:

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or;

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of Factories Act and thus Section 25-N of Chapter VB of I.D.Act shall apply to the present case and

the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permission from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma v/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in **National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391**. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:
>
> The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be

asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.

[15] In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

[16] The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop Sharma's case supra,** the respondent was required to pay the wages of notice period as well as retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had not paid one full month's wages in lieu of notice period and had paid retrenchment compensation to the petitioner on 10.07.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D.Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case isvitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent while terminating his services and thereby violated the principle of 'last come first go' and the

persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. It is admitted case of the parties that the petitioner was engaged as Supervisor on 1.9.2011 and he has been shown at serial No.126 in the seniority list Ext. PA. Though date of appointment of petitioner has been shown 06.02.2012 in seniority list Ext. PA, yet the respondent in his reply has admitted that the petitioner was engaged as Supervisor on 01.09.2011 and therefore the date of appointment of petitioner has to be taken as 01.09.2011 as pleaded by the petitioner. It would be evident from perusal of Ex.PA that all the supervisor were not retrenched by the respondent . Supervisor Chuhru Ram shown at Sr.No.121 engaged on 30.11.2011 after the engagement petitioner on 01.09.2011 was retained by the respondent while terminating the services of petitioner w.e.f. 15.6.2018 and thereby violated the principle of 'last come first go'. Hence, violation of Section 25-G of the I.D.Act is proved,

42. The petitioner, however, has not led cogent evidence on record to prove that fresh hands were engaged after his retrenchment and therefore the petitioner has failed to prove violation of Section 25-H of the I.D.Act.

43. The petitioner thus has proved that the respondent has retrenched him in contravention of the provisions of Sections 25-N or Section 25-F and 25-G of the I.D. Act and therefore the retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

44. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324** has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

45. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity in service along-with all the consequential service benefits including seniority and back wages. The amount of retrenchment compensation already paid by the respondent to the petitioner shall be

adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

46. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH.NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	**:**	**114/2019**
Date of Institution	**:**	**19.10.2019**
Date of Decision	**:**	**23.12.2023**

Shri Duni Chand s/o Shri Jagta Ram, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. .....*Petitioner.*

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bairagarh, Tehsil Churah, District Chamba, H.P. ....*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. O.P. Bhardwaj, Ld. Adv.
For the respondent(s)	:	Sh. Nitin Gupta, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

> "Whether oral termination of services of Shri Duni Chand s/o Shri Jagta Ram, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. by the Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW, Site Office V.P.O. Bagehigarh, Tehsil Churah, District Chamba, H.P. w.e.f. 15-06-2018, after paying retrenchment compensation amounting to Rs. 82,654/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as Mason by the respondent without any appointment letter on 01.09.2011. After his engagement an official of the company had executed Affidavit on 31.12.2012 for providing job to him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs.3600/- as salary and he was receiving Rs. 6300/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 1.1.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full devotion and thus the verbal order of termination of his services is illegal, highly unjustified and also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action, On merits, it has been admitted that the petitioner was engaged as Mason on 1.9.2011, however, it has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed by petitioner', but the petitioner failed to execute the Sale Deed and his land was not used for any purpose. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue pressure so that the construction work might not hamper. The said affidavit is void document and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period. The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in accordance with law. A sum of Rs.82,654/- was paid to the petitioner vide cheque No. 730319 dated 15.6.2018 but the petitioner refused to receive the same and as such the amount was transferred to his salary account on 10.07.2018. It has been denied that fresh hands were engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning

Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company, the retrenched workmen will be given priority for appointment,if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:—

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? ..*OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue no.1 is held in affirmative and issue no.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? ..*OPP*

4. Relief

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of “factory” as per the

provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D.Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contention raised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. It is not in dispute between the parties that the petitioner was engaged as Mason by the respondent on 1.9.2011 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment w.e.f. 15.6.2018 and he has also pleaded that the respondent has not disclosed his actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter on 1.9.2011 and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D.Act as neither the respondent has issued one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to him were retained and principle of 'last come first go' was violated by the respondent and the

respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017 and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.82,654/- was paid to the petitioner vide cheque No. 730319 dated 15.6.2018 but the petitioner refused to receive the same and as such the amount was transferred to his salary account on 10.07.2018 and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Duni Chand, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B and copy of mandays chart Ext. PW1/C in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017. He has denied that the office order dated 14.06.2018 was published by fixation in the office complex. He has also admitted that a sum of Rs.82654/- was deposited by the company in his account on 10.07.2018.

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account of respondent Ext. RW1/D, resolution Ext. RW1/E, letter dated 10.07.2018 Ext. RW1/F and receipt Ext. RW1/G in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 1.9.2011 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent. The affidavit Ext.PW1/B has not been assailed by the respondent in any court till date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser as the land of the petitioner was not used for any purpose by the company and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.3 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure, the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The petitioner Duni Chand PW1, in his cross-examination, has admitted that a sum of Rs.82654/- was deposited by the company in his account on 10.07.2018. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment compensation. However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of his service and has also added one month's wages of the notice period, the sum total whereof is Rs.82,754/- and the petitioner has admitted receipt of Rs.82,654/-. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of receipt of sum of Rs.82,654/- by the petitioner (PW1), it is established on record that the respondent has paid Rs.82,654/- only as retrenchment compensation as well as one month's wages in lieu of the notice period to the petitioner on 10.7.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent. However, Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I,.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs.82,654/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D.Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

25K. Application of Chapter V-B.—

(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

"25L.**Definitions**:—

For the purposes of this Chapter,

(a) "industrial establishment" means;

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (i) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in subclause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen** :—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

"2(m) "Factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952)], or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

> "2(k) "Manufacturing process" means any process for:
>
> (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
>
> (ii) pumping oil, water, sewage or any other substance, or;
>
> (iii) generating, transforming or transmitting power; or
>
> (iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or
>
> (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
>
> (vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of Factories Act and thus Section 25-N of Chapter VB of I.D.Act shall apply to the present case and the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permision from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma vv/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must

accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in **National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391.** The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:

The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.

[15] In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

[16] The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible

to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop Sharma's case supra,** the respondent was required to pay the wages of notice period as well as retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had paid wages in lieu of notice period as well as retrenchment compensation to the petitioner on 10.07.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D.Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case is vitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent while terminating his services and thereby violated the principle of 'last come first go' and the persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. It is admitted case of the petitioner that he was engaged as Mason on 1.9.2011 and he has been shown at serial No.144 in the seniority list Ext. PA as semi skilled worker and all the semi skilled workers have been retrenched by the respondent and the other workmen, who are engaged after the engagement of the petitioner shown at serial Nos. 171, 172, 173, 186, 189, 190, 191, 192, 195 and 200 in the seniority list Ext. PA, are unskilled workers and thus there is no parity between them and the petitioner. The petitioner has not led any other cogent evidence on record to prove that any mason or semi skilled workers junior to him was retained in service by the respondent or any new fresh mason was engaged after his retrenchment and therefore the petitioner has failed to prove violation of Sections 25-G and 25-H of the I.D.Act.

42. However, the petitioner has proved that the respondent has retrenched him in contravention of the provisions of Section 25-N or Section 25-F of the I.D. Act and therefore the

retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

43. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324** has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

44. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity in service along-with all the consequential service benefits including seniority and back wages. The amount of retrenchment compensation already paid by the respondent to the petitioner shall be adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

45. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No.	**:**	**120/22019**
Date of Institution	**:**	**19.10.2019**
Date of Decision	**:**	**14.12.2023**

Shri Khem Raj s/o Shri Umeda, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. .....*Petitioner* .

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bagheigarh, Tehsil Churah, District Chamba, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. O.P.Bhardwaj, Ld. Adv.
For the respondent(s) : Sh. Nitin Gupta, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

> "Whether oral termination of services of Shri Khem Raj s/o Shri Umeda, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. by the Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW, Site Office V.P.O. Bagehigarh, Tehsil Churah, District Chamba, H.P. w.e.f. 15-06-2018, after paying retrenchment compensation amounting to Rs.78,671/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as labourer by the respondent without any appointment letter on 15.07.2011. After his engagement, an official of the company had executed Affidavit on 31.12.2012 for providing job to him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs.3600/- as salary and he was receiving Rs.6800/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 1.1.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full

devotion and thus the verbal order of termination of his services is illegal, highly unjustified and also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action. On merits, it has been admitted that the petitioner was engaged as unskilled worker on 15.07.2011, however, it has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed by petitioner, but the petitioner failed to execute the Sale Deed and his land was not used for any purpose. The company had to file civil suit for specific performance of contract against the petitioner and his brothers but they contested the suit and therefore the suit was withdrawn. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue pressure so that the construction work might not hamper. The said affidavit is void document and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in accordance with law. A sum of Rs.78,671/- was paid to the petitioner vide cheque No. 730324 dated 15.6.2018, but the petitioner refused to receive the same and as such the amount was transferred to his salary account on 10.07.2018. It has been denied that fresh hands were engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company,the retrenched workmen will be given priority for appointment, if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:—

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? ..*OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue No.1 is held in affirmative and issue no.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? ..*OPP*

4. Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of "factory" as per the provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D.Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contention raised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. It is not in dispute between the parties that the petitioner was engaged as unskilled worker by the respondent on 15.7.2011 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment w.e.f. 15.6.2018 and he has also pleaded that the respondent has not disclosed his actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter on 15.7.2011 and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D.Act as neither the respondent has issued one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to him were retained and principle of 'last come first go' was violated by the respondent and the respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017 and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.78,671/- vide cheque No.730324 dated 15.6.2018 which was received by him and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Khem Raj, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B and copy of mandays chart Ext. PW1/C in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017. He has denied that the office order was published by affixation in the office complex. He has also admitted that a sum of Rs.78,671/- was deposited by the company in his account on 10.07.2018.

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account of respondent Ext. RW1/D,

resolution Ext. RW1/E, letter dated 10.07.2018 Ext. RW1/F and receipt Ext. RW1/G in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 15.7.2011 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent. The affidavit Ext.PW1/B has not been assailed by the respondent in any court till date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser as the land of the petitioner was not used for any purpose by the company and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.19 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure, the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The

petitioner Khem Raj PW1, in his cross-examination, has admitted that a sum of Rs.78,671/- was deposited by the company in his account on 10.07.2018. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment compensation. However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of his service and has also added one month's wages of the notice period, the sum total whereof is Rs.78,671/- and the petitioner has admitted receipt of the same. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of receipt of sum of Rs.78,671/- by the petitioner (PW1), it is established on record that the respondent has paid the retrenchment compensation as well as one month's wages in lieu of the notice period to the petitioner on 10.07.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent. However, Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs.78,671/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D.Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

> **25K. Application of Chapter V-B.—**
>
> (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

"25L. **Definitions**:—

For the purposes of this Chapter,

(a) "industrial establishment" means;

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (i) of sub- section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in subclause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen**:—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

"2(m) "Factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952)], or [11][a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

"2(k) "Manufacturing process" means any process for:

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or;

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of

Factories Act and thus Section 25-N of Chapter VB of I.D.Act shall apply to the present case and the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permission from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma v/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in **National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391**. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:
>
> The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go

forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.

[15] In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

[16] The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop Sharma's case supra,** the respondent was required to pay the wages of notice period as well as retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had paid wages in lieu of notice period as well as retrenchment compensation to the petitioner on 10.07.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D.Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case isvitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent

while terminating his services and thereby violated the principle of 'last come first go' and the persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. It is admitted case of the parties that the petitioner was engaged as unskilled worker on 15.07.2011 and he has been shown at serial No.156 in the seniority list Ext. PA as unskilled worker. It would be evident from perusal of Ex.PA that all the unskilled workers were not retrenched by the respondent. The workmen, who are engaged after the engagement of the petitioner, namely, Mohan Lal(Sr.No.170) on 1.10.2011, Narayan Singh(Sr. No. 171) on 10.10.2011, Tamar Singh(Sr. No. 172) on 16.12.2011, Mohan Lal s/o Dass(Sr. No. 173) on 1.10.2011, Chuni Lal(Sr. No. 186) on 8.2.2012, Surat Ram (Sr. No. 189) on 24.04.2013, Hari Om(Sr. No. 190) on 4.10.2013, Tejo Devi (Sr. No. 191) on 01.12.2013, Thakuri Devi (Sr. No. 192) on 01.12.2013, Devi Singh(Sr. No. 195) on 1.11.2014 and Khelko Devi (Sr. No. 200) on 01.07.2016 were retained by the respondent while terminating his services w.e.f. 15.6.2018 and thereby violated the principle of 'last come first go'. Hence, violation of Section 25-G of the I.D.Act is proved,

42. The petitioner, however, has not led cogent evidence on record to prove that fresh hands were engaged after his retrenchment and therefore the petitioner has failed to prove violation of Section 25-H of the I.D.Act.

43. The petitioner thus has proved that the respondent has retrenched him in contravention of the provisions of Sections 25-N or Section 25-F and 25-G of the I.D. Act and therefore the retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

44. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324** has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

45. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity

in service along-with all the consequential service benefits including seniority and back wages. The amount of retrenchment compensation already paid by the respondent to the petitioner shall be adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

46. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM **- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No.	**:**	**115/2019**
Date of Institution	**:**	**19.10.2019**
Date of Decision	**:**	**23.12.2023**

Shri Bodh Raj s/o Shri Beja, r/o Village Makalwani, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. .....*Petitioner.*

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bagheigarh, Tehsil Churah, District Chamba, H.P. ....*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. O. P. Bhardwaj, Ld. Adv.
For the respondent(s)	:	Sh. Nitin Gupta, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

> "Whether oral termination of services of Bodh Raj s/o Shri Beja, r/o Village Makalwani, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. by the Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW, Site Office V.P.O. Baheigarh, Tehsil Churah, District Chamba, H.P. w.e.f. 15-06-2018, after paying retrenchment compensation amounting to Rs. 83,918/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and

full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as labourer by the respondent without any appointment letter on 01.9.2011. After his engagement an official of the company had executed Affidavit on 31.12.2012 for providing job to him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs.3600/- as salary and he was receiving Rs.6300/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 1.1.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full devotion and thus the verbal order of termination of his services is illegal, highly unjustified and also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action. On merits, it has been admitted that the petitioner was engaged as unskilled worker on 1.9.2011, however, it has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed by petitioner, but the petitioner failed to execute the Sale Deed and his land was not used for any purpose. The company had to file civil suit for specific performance of contract against the petitioner and his brother but they contested the suit and therefore the suit was withdrawn. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue pressure so that the construction work might not hamper. The said affidavit is void document and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in

accordance with law. A sum of Rs.83,918/- was paid to the petitioner vide cheque No. 730313 dated 23.6.2018. It has been denied that fresh hands were engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company,the retrenched workmen will be given priority for appointment, if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:—

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? ..*OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue no.1 is held in affirmative and issue no.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? ..*OPP*

4. Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of "factory" as per the provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D.Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contentions raised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. It is not in dispute between the parties that the petitioner was engaged as unskilled worker by the respondent on 1.9.2011 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment w.e.f. 15.6.2018 and he has also pleaded that the respondent has not disclosed his actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter on 1.9.2011 and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D.Act as neither the respondent has issued

one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to him were retained and principle of 'last come first go' was violated by the respondent and the respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017 and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.83,918/- vide cheque No.730313 dated 23.6.2018 which was received by him and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Bodh Raj, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B and copy of mandays chart Ext. PW1/C in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017. He has denied that the office order dated 14.06.2018 was published by affixation in the office complex. He has also admitted that he has received Rs.83,918/- through cheque from the company but he has denied that it was full and final payment.

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account of respondent Ext. RW1/D, full and final settlement/receipt and declaration Note Ext. RW1/E and resolution Ext. RW1/F in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 1.9.2011 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent. The affidavit Ext.PW1/B has not been assailed by the respondent in any court till date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next

day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser as the land of the petitioner was not used for any purpose by the company and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.27 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure, the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The petitioner Bodh Ram PW1, in his cross-examination, has admitted that he has received a sum of Rs.83,918/-. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment compensation. However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of his service and has also added one month's wages of the notice period, the sum total whereof is Rs.83,918/- and the petitioner has admitted receipt of the same. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of receipt of sum of Rs.83,918/- by the petitioner (PW1), it is established on record that the respondent has paid the retrenchment compensation as well as one month's wages in lieu of the notice period to the petitioner on 28.6.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent. However, Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs.83,918/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D.Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

> **25K. Application of Chapter V-B.-**
>
> (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.
>
> (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

> "25L.**Definitions**:—
>
> For the purposes of this Chapter,
>
> (a) "industrial establishment" means;
>
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
>
> (ii) a mine as defined in clause (i) of sub- section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or
>
> (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in subclause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen** :—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

"2(m) "Factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952)], or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

> "2(k) "Manufacturing process" means any process for:
>
> (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
>
> (ii) pumping oil, water, sewage or any other substance, or;
>
> (iii) generating, transforming or transmitting power; or
>
> (iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or
>
> (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
>
> (vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of Factories Act and thus Section 25-N of Chapter VB of I.D.Act shall apply to the present case and the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permission from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even, if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma v/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must

accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in **National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391**. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:

The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.

[15] In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

[16] The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible

to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop Sharma's case supra,** the respondent was required to pay the wages of notice period as well as retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had paid wages in lieu of notice period as well as retrenchment compensation to the petitioner on 28.06.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D.Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case is vitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent while terminating his services and thereby violated the principle of 'last come first go' and the persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. It is admitted case of the parties that the petitioner was engaged as unskilled worker on 1.9.2011 and he has been shown at serial No.158 in the seniority list Ext. PA as unskilled worker. It would be evident from perusal of Ex.PA that all the unskilled workers were not retrenched by the respondent. The workmen, who are engaged after the engagement of the petitioner, namely Mohan Lal (Sr.No.170) on 1.10.2011, Narayan Singh (Sr. No. 171) on 10.10.2011, Tamar Singh (Sr. No. 172) on 16.12.2011, Mohan Lal s/o Dass(Sr. No. 173) on 1.10.2011, Chuni Lal(Sr. No. 186) on 8.2.2012, Surat Ram (Sr. No. 189) on 24.04.2013, Hari Om(Sr. No. 190) on 4.10.2013, Tejo Devi (Sr. No. 191) on 01.12.2013, Thakuri Devi (Sr. No. 192) on 01.12.2013, Devi Singh(Sr. No. 195) on 1.11.2014 and Khelko Devi (Sr. No. 200) on 01.07.2016, were retained by the respondent while terminating his services w.e.f. 15.6.2018 and thereby violated the principle of 'last come first go'. Hence, violation of Section 25-G of the I.D.Act is proved,

42. The petitioner, however, has not led cogent evidence on record to prove that fresh hands were engaged after his retrenchment and therefore the petitioner has failed to prove violation of Section 25-H of the I.D.Act.

43. The petitioner thus has proved that the respondent has retrenched him in contravention of the provisions of Sections 25-N or Section 25-F and 25-G of the I.D. Act and therefore the retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

44. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324**has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

45. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity in service along-with all the consequential service benefits including seniority and back wages. The amount of retrenchment compensation already paid by the respondent to the petitioner shall be adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

46. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No.	**:**	**113/2019**
Date of Institution	**:**	**19.10.2019**
Date of Decision	**:**	**23.12.2023**

Shri Lobhi Ram s/o Shri Sunder, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. .....*Petitioner*.

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bagheigarh, Tehsil Churah, District Chamba, H.P. ....*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv.
For the respondent(s) : Sh. Nitin Gup, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

> "Whether oral termination of services of Shri Lobhi Ram s/o Shri Sunder, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. by the Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW, Site Office V.P.O. Bagehigarh, Tehsil Churah, District Chamba, H.P. w.e.f. 5-06-2018, after paying retrenchment compensation amounting to Rs.80,189/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as labourer by the respondent without any appointment letter on 01.9.2011. After his engagement an official of the company had executed Affidavit on 31.12.2012 for providing job to him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs. 3600/- as salary and he was receiving Rs.6300/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year

intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 1.1.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full devotion and thus the verbal order of termination of his services is illegal, highly unjustified and also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action. On merits, it has been admitted that the petitioner was engaged as unskilled worker on 1.9.2011, however, it has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed by petitioner, but the petitioner failed to execute the Sale Deed and his land was not used for any purpose. The company had to file civil suit for specific performance of contract against the petitioner and his brother but they contested the suit and therefore the suit was withdrawn. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue pressure so that the construction work might not hamper. The said affidavit is void document and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period. The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in accordance with law. A sum of Rs.80,189/- was paid to the petitioner vide cheque No. 730323 dated 15.6.2018 but the petitioner refused to receive the same and as such the amount was transferred to his salary account on 10.07.2018. It has been denied that fresh hands were engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company, the retrenched workmen will be given priority for appointment, if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:—

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? ..*OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue no.1 is held in affirmative and issue no.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? ..*OPP*

4. Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of "factory" as per the provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D.Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the

provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contentions raised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. It is not in dispute between the parties that the petitioner was engaged as unskilled worker by the respondent on 1.9.2011 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment w.e.f. 15.6.2018 and he has also pleaded that the respondent has not disclosed his actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter on 1.9.2011 and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D.Act as neither the respondent has issued one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to him were retained and principle of 'last come first go' was violated by the respondent and the respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017 and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.80,189/- vide cheque No.730323 dated 15.6.2018 but the petitioner refused to receive the same and as such the amount was transferred to his salary account on 10.07.2018 and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Lobhi Ram, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B and copy of mandays chart Ext. PW1/C in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017.He has denied that the office order dated 14.06.2018 was published by affixation in the office complex. He has denied that cheque of Rs.80,189/- was issued by the company in his favour. He, however, has admitted that a sum of Rs.80,189/- was deposited by the company in his account on 10.07.2018.

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account Ext. RW1/D, resolution Ext. RW1/E, letter Ext. RW1/F and copy of envelop Ext. RW1/G in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 1.9.2011 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent. The affidavit Ext.PW1/B has not been assailed by the respondent in any court till date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser. An agreement to sell was executed by petitioner, but the petitioner failed to execute the Sale Deed and his land was not used for any purpose. The company had to file civil suit for specific performance of contract against the petitioner and his brother but they contested the suit and therefore the suit was withdrawn and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.6 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure, the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by

the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The petitioner Lobhi Ram PW1, in his cross-examination, has admitted that a sum of Rs.80,189/- was deposited by the company in his account on 10.07.2018. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment compensation. However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of his service and has also added one month's wages of the notice period, the sum total whereof is Rs.80,189/- and the petitioner has admitted receipt of the same. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of receipt of sum of Rs.80,189/- by the petitioner (PW1), it is established on record that the respondent has paid the retrenchment compensation as well as one month's wages in lieu of the notice period to the petitioner on 10.07.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent. However, Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs.80,189/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D.Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

25K. Application of Chapter V-B.- (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

"25L.**Definitions**:-

For the purposes of this Chapter,

(a) "industrial establishment" means;

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (i) of sub- section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in subclause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen** :—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

"2(m) "Factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952)], or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

"2(k) "Manufacturing process" means any process for:

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or;

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of Factories Act and thus Section 25-N of Chapter VB of I.D.Act shall apply to the present case and the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permission from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma v/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in **National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391**. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:
>
> The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the

reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.

[15] In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

[16] The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop Sharma's case supra,** the respondent was required to pay the wages of notice period as well as

retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had paid wages in lieu of notice period as well as retrenchment compensation to the petitioner on 10.07.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D.Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case isvitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent while terminating his services and thereby violated the principle of 'last come first go' and the persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. It is admitted case of the parties that the petitioner was engaged as unskilled worker on 1.9.2011 and he has been shown at serial No.159 in the seniority list Ext. PA as unskilled worker. It would be evident from perusal of Ex.PA that all the unskilled workers were not retrenched by the respondent. The workmen, who are engaged after the engagement of the petitioner, namely Mohan Lal (Sr.No.170) on 1.10.2011, Narayan Singh (Sr. No. 171) on 10.10.2011, Tamar Singh(Sr. No. 172) on 16.12.2011, Mohan Lal s/o Dass (Sr. No. 173) on 1.10.2011, Chuni Lal (Sr. No. 186) on 8.2.2012, Surat Ram (Sr. No. 189) on 24.04.2013, Hari Om (Sr. No. 190) on 4.10.2013, Tejo Devi (Sr. No. 191) on 01.12.2013, Thakuri Devi (Sr. No. 192) on 01.12.2013, Devi Singh(Sr. No. 195) on 1.11.2014 and Khelko Devi (Sr. No. 200) on 01.07.2016 were retained by the respondent while terminating his services w.e.f. 15.6.2018 and thereby violated the principle of 'last come first go'. Hence, violation of Section 25-G of the I.D.Act is proved,

42. The petitioner, however, has not led cogent evidence on record to prove that fresh hands were engaged after his retrenchment and therefore the petitioner has failed to prove violation of Section 25-H of the I.D.Act.

43. The petitioner thus has proved that the respondent has retrenched him in contravention of the provisions of Sections 25-N or Section 25-F and 25-G of the I.D. Act and therefore the retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

44. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324**has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he

also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

45. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity in service along-with all the consequential service benefits including seniority and back wages. The amount of retrenchment compensation already paid by the respondent to the petitioner shall be adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

46. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No.	**:**	**119/2019**
Date of Institution	**:**	**19.10.2019**
Date of Decision	**:**	**23.12.2023**

Shri Hem Raj s/o Shri Neter, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. .....*Petitioner.*

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bagheigarh, Tehsil Churah, District Chamba, H.P. ....*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. O.P. Bhardwaj, Ld. Adv.
For the respondent(s)	:	Sh. Nitin Gupta, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

"Whether oral termination of services of Shri Hem Raj s/o Shri Neter, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. by the Managing

Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW, Site Office V.P.O. Bagehigarh, Tehsil Churah, District Chamba, H.P. w.e.f. 15-06-2018, after paying retrenchment compensation amounting to Rs.86,413/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as Office Boy/Peon by the respondent without any appointment letter w.e.f. 22.6.2011. After his engagement an official of the company had executed Affidavit on 31.12.2012 for providing job to him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs.3600/- as salary and he was receiving Rs.6300/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 1.1.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full devotion and thus the verbal order of termination of his services is illegal, highly unjustified and also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action. On merits, it has been admitted that the petitioner was engaged as unskilled worker on 22.06.2011, however, it has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed by petitioner, but the petitioner failed to execute the Sale Deed and his land was not used for any purpose. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue pressure so that the construction work might not hamper. The said affidavit is void document

and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in accordance with law. A sum of Rs.86,413/- was paid to the petitioner vide cheque No. 730321 dated 15.6.2018 but the petitioner refused to receive the same and as such the amount was transferred to his salary account on 10.07.2018. It has been denied that fresh hands were engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company, the retrenched workmen will be given priority for appointment, if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:—

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? ..*OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue no.1 is held in affirmative and issue no.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? ..*OPP*

4. Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of "factory" as per the provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D.Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contention raised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. It is not in dispute between the parties that the petitioner was engaged as Peon by the respondent on 22.6.2011 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment w.e.f. 15.6.2018 and he has also pleaded that the respondent has not disclosed his actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the

respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter on 22.6.2011 and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D.Act as neither the respondent has issued one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to him were retained and principle of 'last come first go' was violated by the respondent and the respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017 and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.86,413/- vide cheque No.730321 dated 15.6.2018 which was received by him and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Hem Raj, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B and copy of mandays chart Ext. PW1/C in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017. He has denied that the office order was published by affixation in the office complex. He has denied that cheque of Rs.80,189/- was issued by the company in his favour. He, however, has admitted that a sum of Rs.80,189/- was deposited by the company in his account on 10.07.2018.

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account of respondent Ext. RW1/D, envelop RW1/E full and final settlement/receipt and declaration Note Ext. RW1/F and resolution Ext. RW1/G in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 22.6.2011 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent. The affidavit Ext.PW1/B has not been assailed by the respondent in any court till date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his

termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser as the land of the petitioner was not used for any purpose by the company and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.12 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure, the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that a sum of Rs.4500/- as one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The petitioner Hem Raj PW1, in his cross-examination, has admitted that a sum of Rs.80,189/- was deposited by the company in his account, which as per bank account statement Ext. RW1/D produced on record by the respondent, in fact, is Rs.86,413. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment compensation. However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of

his service and has also added a sum of Rs.4500/- only as one month's wages of the notice period, the sum total whereof is Rs.86,413/- and the petitioner has admitted receipt of the same. It would also be evident from the perusal of detail of retrenchment benefits Ext. RW1/C that the basic pay of the petitioner has been shown Rs.6810/- and a sum of Rs.4500/- only has been paid as notice period salary and thus one month wages were not paid to the petitioner. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of petitioner (PW1), it is established on record that the respondent has paid the retrenchment compensation to the petitioner on 10.7.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent but one full month's wages in lieu of the notice period were not paid to him. Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs.86,413/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D.Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

> **25K. Application of Chapter V-B.-**
>
> (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.
>
> (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

"25L.**Definitions**:-

For the purposes of this Chapter,

(a) "industrial establishment" means;

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (i) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in subclause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen** :—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

> "2(m) "Factory" means any premises including the precincts thereof:
>
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
>
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952)], or [11][a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

> "2(k) "Manufacturing process" means any process for:
>
> (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
>
> (ii) pumping oil, water, sewage or any other substance, or;
>
> (iii) generating, transforming or transmitting power; or
>
> (iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or
>
> (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
>
> (vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of Factories Act and thus Section 25-N of Chapter VB of I.D.Act shall apply to the present case and

the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permission from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma v/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in **National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391**. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:
>
> The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be

asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.

[15] In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

[16] The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop Sharma's case supra,** the respondent was required to pay the wages of notice period as well as retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had not paid one full month's wages in lieu of notice period and had paid retrenchment compensation to the petitioner on 10.07.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D.Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case is vitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent while terminating his services and thereby violated the principle of 'last come first go' and the

persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. It is admitted case of the parties that the petitioner was engaged as unskilled worker on 22.06.2011 and he has been shown at serial No.155 in the seniority list Ext. PA as unskilled worker. It would be evident from perusal of Ex.PA that all the unskilled workers were not retrenched by the respondent. The workmen, who are engaged after the engagement of the petitioner, namely, Mohan Lal(Sr.No.170) on 1.10.2011, Narayan Singh(Sr. No. 171) on 10.10.2011, Tamar Singh(Sr. No. 172) on 16.12.2011, Mohan Lal s/o Dass(Sr. No. 173) on 1.10.2011, Chuni Lal(Sr. No. 186) on 8.2.2012, Surat Ram (Sr. No. 189) on 24.04.2013, Hari Om(Sr. No. 190) on 4.10.2013, Tejo Devi (Sr. No. 191) on 01.12.2013, Thakuri Devi (Sr. No. 192) on 01.12.2013, Devi Singh(Sr. No. 195) on 1.11.2014 and Khelko Devi (Sr. No. 200) on 01.07.2016, were retained by the respondent while terminating his services w.e.f. 15.6.2018 and thereby violated the principle of 'last come first go'. Hence, violation of Section 25-G of the I.D.Act is proved,

42. The petitioner, however, has not led cogent evidence on record to prove that fresh hands were engaged after his retrenchment and therefore the petitioner has failed to prove violation of Section 25-H of the I.D.Act.

43. The petitioner thus has proved that the respondent has retrenched him in contravention of the provisions of Sections 25-N or Section 25-F and 25-G of the I.D. Act and therefore the retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

44. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324** has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

45. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity in service along-with all the consequential service benefits including seniority and back wages. The

amount of retrenchment compensation already paid by the respondent to the petitioner shall be adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

46. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No.	**:**	**116/2019**
Date of Institution	**:**	**19.10.2019**
Date of Decision	**:**	**23.12.2023**

Shri Ram Lal s/o Shri Jivo Ram, r/o Village Makalwani, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. .....*Petitioner.*

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bagheigarh, Tehsil Churah, District Chamba, H.P. ....*Respondent* .

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. O.P. Bhardwaj, Ld. Adv.
For the respondent(s)	:	Sh. Nitin Gupta, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

> "Whether oral termination of services of Shri Ram Lal s/o Shri Jivo Ram, r/o Village Makalwani, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. by the Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW, Site Office V.P.O. Baheigarh, Tehsil Churah, District Chamba, H.P. w.e.f. 15-06-2018, after paying retrenchment compensation amounting to Rs.83,901/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past

service benefits and full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as Mason by the respondent without any appointment letter in the year 2011. After his engagement an official of the company had executed Affidavit on 31.12.2012 for providing job to him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs.3800/- as salary and he was receiving Rs.6800/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 1.1.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full devotion and thus the verbal order of termination of his services is illegal, highly unjustified and also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action, On merits, it has been admitted that the petitioner was engaged as Mason on 1.9.2011, however, it has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed with petitioner's mother Smt. Ganeshu Devi by the company, but the petitioner failed to execute the Sale Deed and his land was not used for any purpose. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue pressure so that the construction work might not hamper. The said affidavit is void document and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period. The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in accordance with law. A sum of Rs.83,901/- was paid to the petitioner vide cheque No. 730318 dated 9.7.2018. It has been denied that fresh hands were

engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company, the retrenched workmen will be given priority for appointment,if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:—

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? ..*OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue No.1 is held in affirmative and issue No.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? ..*OPP*

4. Relief

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that

the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of "factory" as per the provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D. Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contention raised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. It is not in dispute between the parties that the petitioner was engaged as Mason by the respondent on 1.9.2011 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment *w.e.f.* 15-6-2018 and he has also pleaded that the respondent has not disclosed his actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter on 1.9.2011 and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D.Act as neither the respondent has issued one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to

him were retained and principle of 'last come first go' was violated by the respondent and the respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017 and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.83,901/- vide cheque No.730318 dated 9.7.2018 which was received by him and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Ram Lal, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B and copy of mandays chart Ext. PW1/C in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017. He has admitted that the office order dated 14.06.2018 was published by fixation in the office complex. He has also admitted that he has received Rs. 83901/- through cheque from the company but he has denied that it was full and final payment.

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account of respondent Ext. RW1/D, full and final settlement/receipt and declaration Note Ext. RW1/E and resolution Ext. RW1/F in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 1.9.2011 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent. The affidavit Ext.PW1/B has not been assailed by the respondent in any court till date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser as the land of the petitioner was not used for any purpose by the company and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.24 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure, the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The petitioner Ram Lal PW1, in his cross-examination, has admitted that he has received a sum of Rs.83901/-. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment compensation. However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of his service and has also added one month's wages of the notice period, the sum total whereof is Rs.83901/- and the petitioner has admitted receipt of the same. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of receipt of sum of Rs.83901/- by the petitioner (PW1), it is established on record that the respondent has paid the retrenchment compensation as well as one month's wages in lieu of the notice period to the petitioner on 10.7.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent. However, Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs.83,901/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D.Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

25K. Application of Chapter V-B.-

(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

"25L.**Definitions**:-

For the purposes of this Chapter,

(a) "industrial establishment" means;

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (i) of sub- section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in subclause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen** :—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this sectionv referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

"2(m) "Factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

> "2(k) "Manufacturing process" means any process for:
>
> (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
>
> (ii) pumping oil, water, sewage or any other substance, or;
>
> (iii) generating, transforming or transmitting power; or
>
> (iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or
>
> (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
>
> (vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of Factories Act and thus Section 25-N of Chapter VB of I.D.Act shall apply to the present case and the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permission from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma v/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must

accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in **National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391**. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:

The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.

[15] In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

[16] The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible

to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantiveevidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop Sharma's case supra,** the respondent was required to pay the wages of notice period as well as retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had paid wages in lieu of notice period as well as retrenchment compensation to the petitioner on 10.07.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D.Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case isvitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent while terminating his services and thereby violated the principle of 'last come first go' and the persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. It is admitted case of the petitioner that he was engaged as Mason on 1.9.2011 and he has been shown at serial No.143 in the seniority list Ext. PA as semi skilled worker and all the semi skilled workers have been retrenched by the respondent and the other workmen, who are engaged after the engagement of the petitioner shown at serial Nos. 171, 172, 173, 186, 189, 190, 191, 192, 195 and 200 in the seniority list Ext. PA, are unskilled workers and thus there is no parity between them and the petitioner. The petitioner has not led any other cogent evidence on record to prove that any mason or semi skilled workers junior to him was retained in service by the respondent or any new fresh mason was engaged after his retrenchment and therefore the petitioner has failed to prove violation of Sections 25-G and 25-H of the I.D.Act.

42. However, the petitioner has proved that the respondent has retrenched him in contravention of the provisions of Section 25-N or Section 25-F of the I.D. Act and therefore the retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

43. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324**has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

44. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity in service along-with all the consequential service benefits including seniority and back wages. The amount of retrenchment compensation already paid by the respondent to the petitioner shall be adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

45. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No.	**:**	**110/2019**
Date of Institution	**:**	**19.10.2019**
Date of Decision	**:**	**23.12.2023**

Shri Pradeep Kumar s/o Shri Hari Lal, r/o Village Kainthli, P.O. Bhandal, Tehsil Salooni, District Chamba, H.P. .....*Petitioner* .

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bagheigarh, Tehsil Churah, District Chamba, H.P. ....*Respondent* .

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv.
For the respondent(s) : Sh. Vaneet K. Gupta, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

> "Whether oral termination of services of Shri Pradeep Kumar s/o Shri Hari Lal, r/o Village Kainthli, P.O. Bhandal, Tehsil Salooni, District Chamba, H.P. by the Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW, Site Office V.P.O. Baheigarh, Tehsil Churah, District Chamba, H.P. w.e.f. 15-06-2018, after paying retrenchment compensation amounting to Rs.91,075/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as labourer by the respondent without any appointment letter w.e.f. 1.12.2012. After his engagement an official of the company had executed Affidavit on 31.12.2012 for providing job to him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs.3600/- as salary and he was receiving Rs.6300/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 1.1.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full devotion and thus the verbal order of termination of his services is illegal, highly unjustified and

also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action, On merits, it has been admitted that the petitioner was engaged as unskilled worker on 1.12.2012, however, it has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed by the wife of the petitioner, but the petitioner failed to execute the Sale Deed and his land was not used for any purpose. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue pressure so that the construction work might not hamper. The said affidavit is void document and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in accordance with law. A sum of Rs.91,075/- was paid to the petitioner vide cheque No. 730308 dated 21.6.2018. It has been denied that fresh hands were engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company,the retrenched workmen will be given priority for appointment, if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:—

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? .. *OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue no.1 is held in affirmative and issue no.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? .. *OPP*

4. Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of "factory" as per the provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D.Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contention raised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. It is not in dispute between the parties that

the petitioner was engaged by the respondent in the year 2012. The petitioner has claimed that he was engaged by the respondent as labourer on 1.12.2012 and the respondent in his reply has also admitted so, but Shri Sunil Guleria RW1, Manager (Admin) of the respondent company in his affidavit Ext. RW1/A has stated that the petitioner was engaged by the respondent as Welder on 21.11.2012 and he has been referred to as Welder in Certificate Ext. PW1/D and Seniority List Ext. PA at Sr.No.60 filed by the petitioner himself as well as in termination order Ext. RW1/B and thus it is admitted case of the respondent that the petitioner was engaged by the respondent as Welder on 21.11.2012 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment w.e.f. 15.6.2018 and he has also pleaded that the respondent has not disclosed his actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D.Act as neither the respondent has issued one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to him were retained and principle of 'last come first go' was violated by the respondent and the respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017 and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.91,075/- vide cheque No.730308 dated 21.6.2018 which was received by him and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Pradeep Kumar, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B and copy of mandays chart Ext. PW1/C in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017. He has denied that the office order dated 14.06.2018 was published by affixation in the office complex. He has admitted that a sum of Rs.91,075/- was deposited by the respondent in his account on 10.07.2018 and he has received the said amount.

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account of respondent Ext. RW1/D, payment voucher Ext. RW1/E, full and final settlement/receipt and declaration Note Ext. RW1/F and resolution Ext. RW1/G in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 1.12.2012 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent. The affidavit Ext.PW1/B has not been assailed by the respondent in any court till date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser as the land of the petitioner or his family was not used for any purpose by the company and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.32 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure, the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner or his family was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the

respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that a sum of Rs.6300 as one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The petitioner Pradeep Kumar PW1, in his cross-examination, has admitted that a sum of Rs.91,075/- was deposited by the company in his account on 10.07.2018. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment compensation. However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of his service and has also added a sum of Rs.6300/- only as one month's wages of the notice period, the sum total whereof is Rs.91075/- and the petitioner has admitted receipt of the same. It would also be evident from the perusal of detail of retrenchment benefits Ext. RW1/C that the basic pay of the petitioner has been shown Rs.9435/- and a sum of Rs.6300/- only has been paid as notice period salary and thus one month wages were not paid to the petitioner. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of receipt of sum of Rs.91075/- by the petitioner (PW1), it is established on record that the respondent has paid the retrenchment compensation to the petitioner on 05.07.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent but one full month's wages in lieu of the notice period were not paid to him. Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs.91,075/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D.Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

25K. Application of Chapter V-B.—

(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

"25L.**Definitions**:—

For the purposes of this Chapter,

(a) "industrial establishment" means;

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (i) of sub- section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in subclause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen** :-

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently)in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

"2(m) "Factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952)], or [11][a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

"2(k) "Manufacturing process" means any process for:

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or;

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of Factories Act and thus Section 25-N of Chapter VB of I.D.Act shall apply to the present case and the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permission from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma v/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in **National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391**. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:
>
> The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not

be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.

[15] In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

[16] The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop**

Sharma's case supra, the respondent was required to pay the wages of notice period as well as retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had not paid one full month's wages in lieu of notice period and had paid retrenchment compensation to the petitioner on 05.07.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D.Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case is vitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent while terminating his services and thereby violated the principle of 'last come first go' and the persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. Sunil Guleria, RW1, has stated that the petitioner was appointed as Welder and he has shown as Welder in the retrenchment order Ext. RW1/B and even detail of the retrenchment compensation Ext. RW1/C and he has been shown as Welder in the seniority list Ext. PA at serial No.60. It would be evident from the perusal of seniority list Ext. PA that the petitioner was engaged as Welder on 21.11.2012 and other Welder namely Chain Singh, who is still working, was engaged on 1.9.2011 prior to engagement of the petitioner and thus he was senior to the petitioner. The petitioner has not led any other cogent evidence on record to prove that any Welder junior to him was retained in service by the respondent or any new/fresh Welder was engaged after his retrenchment and therefore the petitioner has failed to prove violation of Sections 25-G and 25-H of the I.D.Act.

42. However, the petitioner has proved that the respondent has retrenched him in contravention of the provisions of Section 25-N or Section 25-F of the I.D. Act and therefore the retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

43. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324** has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

44. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity in service along-with all the consequential service benefits including seniority and back wages. The amount of retrenchment compensation already paid by the respondent to the petitioner shall be adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

45. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No.	**:**	**118/2019**
Date of Institution	**:**	**19.10.2019**
Date of Decision	**:**	**23.12.2023**

Shri Jhanda Ram s/o Shri Janta Ram, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. .....*Petitioner.*

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bagheigarh, Tehsil Churah, District Chamba, H.P. ....*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. O.P. Bhardwaj, Ld. Adv.
For the respondent(s)	:	Sh. Nitin Gupta, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

> "Whether oral termination of services of Shri Jhanda Ram s/o Shri Janta Ram, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. by the Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW,

Site Office V.P.O. Bagehigarh, Tehsil Churah, District Chamba, H.P. w.e.f. 15-06-2018, after paying retrenchment compensation amounting to Rs.78, 257/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as labourer by the respondent without any appointment letter on 15.07.2011. After his engagement an official of the company had executed Affidavit on 31.12.2012 for providing job to him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs.3600/- as salary and he was receiving Rs.6300/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 01.01.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full devotion and thus the verbal order of termination of his services is illegal, highly unjustified and also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action. On merits, it has been admitted that the petitioner was engaged as unskilled worker on 15.7.2011, however, it has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed by petitioner, but the petitioner failed to execute the Sale Deed and his land was not used for any purpose. The company had to file civil suit for specific performance of contract against the petitioner and his brother but they contested the suit and therefore the suit was withdrawn. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue

pressure so that the construction work might not hamper. The said affidavit is void document and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in accordance with law. A sum of Rs.78,257/- was paid to the petitioner vide cheque No. 730320 dated 15.6.2018 but the petitioner refused to receive the same and as such the amount was transferred to his salary account on 10.07.2018. It has been denied that fresh hands were engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company,the retrenched workmen will be given priority for appointment, if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:—

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? ..*OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue No.1 is held in affirmative and issue no.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? .. OPP

4. Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of "factory" as per the provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D.Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contention raised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. It is not in dispute between the parties that the petitioner was engaged as unskilled worker by the respondent on 15.7.2011 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment w.e.f. 15.6.2018 and he has also pleaded that the respondent has not disclosed his actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the

respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter on 15.7.2011 and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D.Act as neither the respondent has issued one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to him were retained and principle of 'last come first go' was violated by the respondent and the respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017 and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.78,257/- vide cheque No.730320 dated 15.6.2018 which was received by him and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Jhanda Ram, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B and copy of mandays chart Ext. PW1/C in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017. He has denied that the office order was published by affixation in the office complex. He has admitted that a sum of Rs.78,257/- was deposited by the respondent in his account on 10.07.2018.

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account of respondent Ext. RW1/D, copy of envelop Ext. RW1/E, full and final settlement/receipt and declaration Note Ext. RW1/F and resolution Ext. RW1/G in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 15.7.2011 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent. The affidavit Ext.PW1/B has not been assailed by the respondent in any court till date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser as the land of the petitioner was not used for any purpose by the company and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.1 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure, the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The petitioner Jhanda Ram PW1, in his cross-examination, has admitted that a sum of Rs.78,257/- was deposited by the respondent in his account. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment compensation. However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of his service and has also added one month's wages of the notice period, the sum total whereof is Rs.78,257/- and the petitioner has admitted receipt of the same. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of receipt of sum of Rs.78,257/- by the petitioner (PW1), it is established on record that the respondent has paid the retrenchment compensation as well as one month's wages in lieu of the notice period to the petitioner on

10.07.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent. However, Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs.78,257/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D.Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

> **25K. Application of Chapter V-B.—**
>
> (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.
>
> (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

> "25L.**Definitions**:-
>
> For the purposes of this Chapter,
>
> (a) "industrial establishment" means;
>
> (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
>
> (ii) a mine as defined in clause (i) of sub- section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in subclause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen** :—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

"2(m) "Factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is

being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952)], or [11][a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

"2(k) "Manufacturing process" means any process for:

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or;

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of Factories Act and thus Section 25-N of Chapter VB of I.D.Act shall apply to the present case and the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permission from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma v/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in **National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391**. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:
>
> The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.
>
> **[15]** In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).
>
> **[16]** The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:
>
> The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid

is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the etrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop Sharma's case supra,** the respondent was required to pay the wages of notice period as well as retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had paid wages in lieu of notice period as well as retrenchment compensation to the petitioner on 10.07.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D.Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case isvitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent while terminating his services and thereby violated the principle of 'last come first go' and the persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. It is admitted case of the parties that the petitioner was engaged as unskilled worker on 15.07.2011 and he has been shown at serial No.157 in the seniority list Ext. PA as unskilled worker. It would be evident from perusal of Ex.PA that all the unskilled workers were not retrenched by the respondent. The workmen, who are engaged after the engagement of the petitioner, namely, Mohan Lal(Sr.No.170) on 1.10.2011, Narayan Singh(Sr. No. 171) on 10.10.2011, Tamar Singh(Sr. No. 172) on 16.12.2011, Mohan Lal

s/o Dass(Sr. No. 173) on 1.10.2011, Chuni Lal(Sr. No. 186) on 8.2.2012, Surat Ram (Sr. No. 189) on 24.04.2013, Hari Om(Sr. No. 190) on 4.10.2013, Tejo Devi (Sr. No. 191) on 01.12.2013, Thakuri Devi (Sr. No. 192) on 01.12.2013, Devi Singh(Sr. No. 195) on 1.11.2014 and Khelko Devi (Sr. No. 200) on 01.07.2016, were retained by the respondent while terminating his services w.e.f. 15.6.2018 and thereby violated the principle of 'last come first go'. Hence, violation of Section 25-G of the I.D.Act is proved,

42. The petitioner, however, has not led cogent evidence on record to prove that fresh hands were engaged after his retrenchment and therefore the petitioner has failed to prove violation of Section 25-H of the I.D.Act.

43. The petitioner thus has proved that the respondent has retrenched him in contravention of the provisions of Sections 25-N or Section 25-F and 25-G of the I.D. Act and therefore the retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

44. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324** has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

45. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity in service along-with all the consequential service benefits including seniority and back wages. The amount of retrenchment compensation already paid by the respondent to the petitioner shall be adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

46. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM **- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No.	**:**	**109/2019**
Date of Institution	**:**	**19.10.2019**
Date of Decision	**:**	**23.12.2023**

Shri Chuhru Ram s/o Shri Bhumi Chand, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. .....*Petitioner.*

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bagheigarh, Tehsil Churah, District Chamba, H.P. ....*Respondent* .

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. O.P. Bhardwaj, Ld. Adv.
For the respondent(s)	:	Sh. Nitin Gupta, Ld.Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

> "Whether oral termination of services of Shri Chuhru Ra s/o Shri Bhumi Chand, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. by the Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW, Site Office V.P.O. Baheigarh, Tehsil Churah, District Chamba, H.P. w.e.f. 15-06-2018, after paying retrenchment compensation amounting to Rs.77,778/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as labourer by the respondent without any appointment letter on 01.09.2011. After his engagement an official of the company had executed Affidavit on 31.12.2012 for providing job to him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs.3600/- as salary and he was receiving Rs.6300/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram

Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 1.1.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full devotion and thus the verbal order of termination of his services is illegal, highly unjustified and also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action. On merits, it has been admitted that the petitioner was engaged as unskilled worker on 1.9.2011, however, it has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed by the father of the petitioner, but the petitioner failed to execute the Sale Deed and his land was not used for any purpose. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue pressure so that the construction work might not hamper. The said affidavit is void document and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in accordance with law. A sum of Rs.77,778/- was paid to the petitioner vide cheque No. 730312 dated 23.6.2018. It has been denied that fresh hands were engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company, the retrenched workmen will be given priority for appointment, if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:—

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? ..*OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue no.1 is held in affirmative and issue no.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? ..*OPP*

4. Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1	:	Partly Yes
Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter-linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of "factory" as per the provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D. Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contentions raised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. It is not in dispute between the parties that the petitioner was engaged as unskilled worker by the respondent on 1.9.2011 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment w.e.f. 15.6.2018 and he has also pleaded that the respondent has not disclosed his actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter on 1.9.2011 and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D. Act as neither the respondent has issued one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to him were retained and principle of 'last come first go' was violated by the respondent and the respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017 and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.77,778/- vide cheque No.730312 dated 23.6.2018 which was received by him and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Chuhru Ram, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B and copy of mandays chart Ext. PW1/C in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017. He

has denied that the office order was published by affixation in the office complex. He has also admitted that he has received Rs.77,778/- through cheque from the company but he has denied that it was full and final payment. He has also stated that he had received Rs.91,075/- .

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account of respondent Ext. RW1/D, full and final settlement/receipt and declaration Note Ext. RW1/E and resolution Ext. RW1/F in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 1.9.2011 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent. The affidavit Ext.PW1/B has not been assailed by the respondent in any court till date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no s document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser as the land of the petitioner was not used for any purpose by the company and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.4 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure,

the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner or his family was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The petitioner Chuhru Ram PW1, in his cross-examination, has admitted that he has received a sum of Rs.77,778/- through cheque dated 23.06.2018. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment compensation. However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of his service and has also added one month's wages of the notice period, the sum total whereof is Rs.77,778/- and the petitioner has admitted receipt of the same. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of receipt of sum of Rs.77,778/- by the petitioner (PW1), it is established on record that the respondent has paid the retrenchment compensation as well as one month's wages in lieu of the notice period to the petitioner on 28.6.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent. However, Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs.77,778/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D. Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

25K. Application of Chapter V-B.—

(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

"25L.**Definitions**:-

For the purposes of this Chapter,

(a) "industrial establishment" means;

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (i) of sub- section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in subclause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen** :-

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section eferred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

"2(m) "Factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952)], or [11][a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

"2(k) "Manufacturing process" means any process for:

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or;

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of Factories Act and thus Section 25-N of Chapter VB of I.D. Act shall apply to the present case and the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permission from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even, if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma v/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in **National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391**. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:
>
> The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was malafide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been

complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.

[15] In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

[16] The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop Sharma's case supra,** the respondent was required to pay the wages of notice period as well as retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had paid wages in lieu of notice period as well as retrenchment compensation to the petitioner on 28.06.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D. Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case is vitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent while terminating his services and thereby violated the principle of 'last come first go' and the persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. It is admitted case of the parties that the petitioner was engaged as unskilled worker on 1.9.2011 and he has been shown at serial No.160 in the seniority list Ext. PA as unskilled worker. It would be evident from perusal of Ex.PA that all the unskilled workers were not retrenched by the respondent. The workmen, who are engaged after the engagement of the petitioner, namely Mohan Lal(Sr.No.170) on 1.10.2011, Narayan Singh (Sr. No. 171) on 10.10.2011, Tamar Singh (Sr. No. 172) on 16.12.2011, Mohan Lal s/o Dass (Sr. No. 173) on 1.10.2011, Chuni Lal (Sr. No. 186) on 8.2.2012, Surat Ram (Sr. No. 189) on 24.04.2013, Hari Om (Sr. No. 190) on 4.10.2013, Tejo Devi (Sr. No. 191) on 01.12.2013, Thakuri Devi (Sr. No. 192) on 01.12.2013, Devi Singh (Sr. No. 195) on 1.11.2014 and Khelko Devi (Sr. No. 200) on 01.07.2016, were retained by the respondent while terminating his services w.e.f. 15.6.2018 and thereby violated the principle of 'last come first go'. Hence, violation of Section 25-G of the I.D. Act is proved.

42. The petitioner, however, has not led cogent evidence on record to prove that fresh hands were engaged after his retrenchment and therefore the petitioner has failed to prove violation of Section 25-H of the I.D.Act.

43. The petitioner thus has proved that the respondent has retrenched him in contravention of the provisions of Sections 25-N or Section 25-F and 25-G of the I.D. Act and therefore the retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

44. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324** has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the

employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

45. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity in service along-with all the consequential service benefits including seniority and back wages. The amount of retrenchment compensation already paid by the respondent to the petitioner shall be adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

46. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No.	**:**	**112/2019**
Date of Institution	**:**	**19.10.2019**
Date of Decision	**:**	**23.12.2023**

Shri Tej Singh s/o Shri Tovaki Ram, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. .....*Petitioner.*

Versus

The Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36 MW, Site Office VPO Bagheigarh, Tehsil Churah, District Chamba, H.P. ....*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. O.P. Bhardwaj, Ld. Adv.
For the respondent(s)	:	Sh. Nitin Gupta, Ld. Adv.

AWARD

The appropriate Government has made the following reference Under Section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D. Act') to this court for adjudication:—

> "Whether oral termination of services of Shri Tej Singh s/o Shri Tovaki Ram, r/o Village Dalijan, P.O. Tikrigarh, Tehsil Churah, District Chamba, H.P. by the Managing Director, I.A. Energy, Hydro Energy Private Limited, Chanju-I, 36MW, Site Office V.P.O. Bagehigarh, Tehsil Churah, District Chamba, H.P. w.e.f.15-06-2018, after paying retrenchment compensation amounting to Rs.94,780/- and retaining juniors, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and full and final compensation the above worker is entitled to from the above employer/management?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that he was initially engaged on daily wage basis as Supervisor by the respondent without any appointment letter on 01.09.2011. After his engagement an official of the company had executed Affidavit on 31.12.2012 for providing job to him for 40 years as his land was also taken by the respondent company for construction of project. He initially was paid Rs.3800/- as salary and he was receiving Rs.7,888/- at the time of oral termination of his services on 15.6.2018. After termination of his services, he approached the respondent time and again to re-engage him but the respondent did not pay any heed to his requests. The State of H.P. has framed the policy for regularization of daily wage workers. As per policy, the worker is required to work for 240 days in each calendar year. The respondent did not disclose actual number of days before Conciliation Officer. The respondent has given fictional breaks in his services and retrenched him without giving one month's notice or retrenchment compensation to him. His services were illegally terminated by the respondent on 15.6.2018. The respondent retained workmen junior to him in service and the persons whose services were illegally terminated by the respondent with him, have been re-engaged. The respondent has retained Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram while terminating his services and thus principle of 'last come first go' has been violated by the respondent. Respondent has engaged fresh hands after termination of his services without giving him an opportunity of re-employment. He never remained absent from duty since his engagement till the date of illegal termination of his services. The respondent had given fictional breaks in his services so that he might not complete 240 days in each calendar year intentionally. Had his services were not terminated illegally and fictional breaks were not given in his service, he would have completed 8 years of continuous service as on 31.12.2019 and would have become entitled for work charge status/regularization w.e.f. 1.1.2020. He was never charged sheeted for any act of indiscipline, negligence of work or misconduct. He worked with full devotion and thus the verbal order of termination of his services is illegal, highly unjustified and also against the principle of natural justice. He is unemployed since 15.6.2018. He requested the respondent orally as well as in writing to re-engage him but despite the fact that the company is commissioning another project namely Chanju-II Tehsil Churah, District Chamba, no opportunity was given to him at the time of appointment of new workmen. Hence the petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of true and material facts and cause of action. On merits, it has been admitted that the petitioner was engaged as Supervisor on 1.9.2011, however, it

has been averred that the appointment of the petitioner was made till the time of commissioning of the project. No assurance was given to the petitioner to provide him job for 40 years. Moreover, petitioner was not a land looser. Though an agreement to sell was executed by the father of the petitioner, but the petitioner failed to execute the Sale Deed and his land was not used by the company for any purpose. Since the project of the company has been commissioned, the petitioner is debarred to file present claim. The company has already deposited Rs.4.36 crore with District Administration for development purposes. The affidavit dated 31.12.2012 was got executed by one of the officer under undue pressure so that the construction work might not hamper. The said affidavit is void document and is not binding upon the company. The petitioner was retrenched after issuing retrenchment notice alongwith payment of salary for notice period. The project had been commissioned and the services of the petitioner were no more required by the company and as such he was retrenched in accordance with law. A sum of Rs.94,780/- was offered to the petitioner vide cheque No. 730322 dated 15.06.2018, but the petitioner refused to receive the same and as such the amount was transferred to his salary account on 10.07.2018.. It has been denied that fresh hands were engaged after the retrenchment of the petitioner or the junior to the petitioner were retained by the company. Uma Kumari is Nurse, Ram Singh is Mechanic and Bablu and Surinder are expert in cleaning Power House floor and as such their services were required by the company. The other workmen were required for specific work. As per policy of the company, the retrenched workmen will be given priority for appointment, if any, made in future. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been re-affirmed after refuting those of the replies contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.9.2022:—

1. Whether the services of the petitioner have been terminated by the respondent is violation of the provisions contained under Section 25-F, 25-G and 25-H of the Act, as alleged? ..*OPP*

2. Whether the respondent has followed the procedure in order to retrench the services of the petitioner as claimed in the reply, as alleged? ..*OPR*

3. In case, issue no.1 is held in affirmative and issue no.2 is held in negative, whether the petitioner is entitled for the relief of reinstatement with back wages, seniority, past service benefits and compensation as claimed? ..*OPP*

4. Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondents have examined Manager (Admin.) Shri Sunil Guleria as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the parties and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, my findings on the above issues are as under:—

Issue No.1 : Partly Yes

Issue No.2	:	No
Issue No.3	:	Yes
Relief.	:	Petition is allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

11. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. The learned Counsel for the petitioner vehemently contended that Shri Sunil Guleria RW1, Manager (Admin) of the respondent company, in his cross-examination, has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in the project and thus the respondent company falls within the definition of "factory" as per the provisions of Section 2 (m) read with Section 2 (k) (iii) of the Factories Act, 1948 as the respondent company is generating and transmitting the electricity and therefore provisions of Section 25-N of Chapter VB instead of Section 25-F of the I.D. Act are/were applicable to the present case and the respondent company was required to give three months notice in writing to the petitioner indicating reasons for retrenchment or to pay wages in lieu of notice period and to seek permission of the appropriate Government before retrenchment of the petitioner. But the respondent company has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor has sought permission from appropriate Government before retrenchment of the petitioner, therefore, the retrenchment of the petitioner is illegal and the petitioner is entitled to be reinstated with all consequential benefits on this count alone. Learned Counsel further submitted that the respondent has also not even complied with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as the respondent company has neither given one month's notice to the petitioner nor paid wages in lieu of notice period nor retrenchment compensation in accordance with law and even the juniors to the petitioner were retained and fresh hands were also engaged and therefore the retrenchment of the petitioner is illegal. Hence, the claim petition be allowed and the respondent be directed to reinstate the petitioner along-with all consequential benefits including back wages.

13. On the other hand, the learned Counsel for the respondent vehemently contended that the provisions of Chapter VB of the I.D. Act and Section 25-N of the I.D. Act are not applicable to the present case as the respondent does not fall within the definition of "factory" and the respondent company has retrenched the petitioner along-with others after complying with the provisions of Section 25-F of the I.D. Act as the construction work of the project was completed and their services were no more required and only skilled workmen have been retained in service whose services were further required. The respondent company has retrenched the petitioner along-with others in accordance with law after payment of wages of the notice period as well as retrenchment compensation and therefore the petition filed by the petitioner be dismissed.

14. Before adverting to the rival contention raised by the learned Counsel for the parties, the facts admitted or not disputed may be noticed first. It is not in dispute between the parties that the petitioner was engaged as Supervisor by the respondent on 1.9.2011 and he worked as such with the respondent company till 14.6.2018 and he along-with others was retrenched by the respondent company vide order dated 14.6.2018 Ext. RW1/B.

15. The petitioner has claimed that he continuously served the respondent company till his retrenchment w.e.f. 15.6.2018 and he has also pleaded that the respondent has not disclosed his

actual working days and has given fictional breaks in service, however, the respondent has denied to have given any fictional breaks in service of the petitioner. The respondent has also not disputed the fact that the petitioner continuously served with the company till his retrenchment w.e.f. 15.6.2018 nor has claimed that the petitioner has not worked for 240 days prior to his retrenchment or that he was not in continuous service during the period of 12 months preceding the date of his retrenchment and thus it is also undisputed that the petitioner was in continuous service with the respondent before his retrenchment vide order dated 14.6.2018 Ext. RW1/B, which fact is also evident from mandays chart Ext. PW1/C.

16. The petitioner has alleged that he was engaged without any appointment letter on 1.9.2011 and that the respondent has agreed to give him job for period of 40 years as his land was acquired for construction of project and his services were orally terminated on 15.6.2018 without complying with the provisions of Section 25-F of the I.D. Act as neither the respondent has issued one month's notice to him indicating reason for his retrenchment nor paid one month's wages in lieu of notice period nor paid any retrenchment compensation to him and even the persons junior to him were retained and principle of 'last come first go' was violated by the respondent and the respondent has also employed fresh hands without giving any opportunity to him for re-employment.

17. On the other hand, the respondent has claimed that the appointment of the petitioner was made till the commissioning of the project and the project was commissioned in the year 2017 and the services of the petitioner were not required and he was retrenched as per law and that the petitioner is not the land looser as he had not given land to the company nor his land was used by the company for any purpose and that no assurance was given to the petitioner to provide him job for 40 years and he was paid compensation amounting to Rs.94,780/- vide cheque No.730322 dated 15.6.2018 which was deposited in his salary account on 10.07.2018 and the project was commissioned and the services of the petitioner were no more required and as such he was retrenched.

18. The petitioner Tej Singh, in substantiation of his claim appeared as PW1 and filed his affidavit Ext. PW1/A in his examination-in-chief in which he has affirmed all the averments made in the petition on oath. He has also filed copy of affidavit Ext. PW1/B, copy of mandays chart Ext. PW1/C, copy of identity card Ext. PW1/D and copy of certificate Ext. PW1/E in evidence. In his cross-examination, he has stated that his land was used by the respondent for construction of the project. He has admitted that power generation was started in the year 2017. He has denied that the construction of the project was completed in the year 2017. He has denied that the office order was published by affixation in the office complex. He has admitted that a sum of Rs.94,780/- was deposited by the company in his account on 10.07.2018.

19. The petitioner has also tendered copy of seniority list Ext. PA and copies of muster rolls Ext. PB in evidence.

20. On the other hand, the respondent has examined its Manager (Admin) Shri Sunil Guleria as RW1. He has filed affidavit Ext. RW1/A in his examination-in-chief wherein he has affirmed all the averments made in the reply on oath. He has also tendered order dated 14.6.2018 Ext. RW1/B, details of benefits Ext. RW1/C, statement of account of respondent Ext. RW1/D, copy of envelop Ext. RW1/E, full and final settlement letter Ext. RW1/F and resolution Ext. RW1/G in evidence. In his cross-examination, he has admitted that the construction of the project was started in the year 2011 and around 300 workers were working in this project. He has denied that the petitioner had worked w.e.f. 1.9.2011 to 15.6.2018 and added that the petitioner had participated in mass strike in between. List of those workmen who were retrenched in between was displayed by the respondent. The affidavit Ext.PW1/B has not been assailed by the respondent in any court till

date. He has admitted that they have retained workmen shown in para No.10 of the petition and added that their services were required for the reason that they were skilled workmen in a particular work. He has admitted that they have transferred service benefits in the account of the petitioner. He feigned ignorance that the petitioner is unemployed after termination by company. He has denied that no retrenchment notice was given to the petitioner at the time of his termination and added that notice is Ext. RW1/B. He has admitted that approximately 14-15 workers are still working in their company and added that they are land looser as they had purchased land from them.

21. This is entire evidence led by both the parties on record. It is evident from the resume of the evidence of the both the parties that the retrenchment order Ext. RW1/B, which is stated to be retrenchment notice by Sunil Guleria (RW1), in fact, was not served personally upon the petitioner; rather the same was affixed in the office complex. The order Ext.RW1/B, admittedly was passed on 14.6.2018 and services of the petitioner were retrenched w.e.f. 15.6.2018 i.e. next day of the order and thus no notice of termination of services/retrenchment was served upon the petitioner prior to his retrenchment.

22. The respondent has claimed that the appointment of the petitioner was made till commissioning of the project, however, no document has been produced on record by the respondent to prove the same.

23. The respondent has also claimed that the petitioner is not a land looser as the land of the petitioner was not used for any purpose by the company and that the affidavit Ext. PW1/B was executed by one of the officer under undue pressure so that the construction work might not hamper and the said affidavit is void document and is not binding upon the company, however, Shri Sunil Guleria RW1, in his cross-examination, categorically has admitted that they had not challenged affidavit Ext. PW1/B in any court of law till date. It would be evident from the perusal of affidavit Ext. PW1/B sworn before Executive Magistrate that Shri Swaraj Bhushan, the then Vice Chairman of the respondent company, had undertaken to provide employment to families of the owners/sellers whose land was acquired/purchased for the project and also to the families affected by the project for 40 years as per their qualifications and name of the petitioner figures at serial No.2 which in turn shows that the land of the petitioner or his family was acquired/purchased or used by the company or his family was affected by the construction of the project. Since the execution of affidavit Ext. PW1/B by the Vice Chairman of the company has not been denied and no evidence has been led that the affidavit was got executed under any undue influence or pressure, the respondent is bound by the undertaking/promise made in affidavit Ext. PW1/B. The respondent was required to lead cogent evidence on record to prove that persons named in the affidavit Ext. PW1/B were not affected by the construction of project or their land was not acquired and used for construction of the project but the respondent has not led cogent evidence on record to prove the same and therefore, in view of the contents of the affidavit Ext. PW1/B, it can safely be concluded that the land of the petitioner was used by the respondent for construction of the project and thus as per undertaking in affidavit Ext. PW1/B, the respondent was bound to provide employment to the petitioner for 40 years. Hence the retrenchment of the petitioner is liable to be set aside on this count alone.

24. The respondent, however, has led cogent evidence on record to prove that a sum of Rs. 5100 as one month's wages in lieu of notice period and retrenchment compensation was paid to the petitioner. The petitioner Tej Singh PW1, in his cross-examination, has admitted that a sum of Rs. 94,780/- was deposited by the company in his account on 10.07.2018. The learned Counsel for the petitioner, during course of arguments, vehemently contended that Manager (Admin) Shri Sunil Guleria (RW1), in his cross-examination, has admitted that they have transferred service benefits in the account of the petitioner and therefore it cannot be said to be retrenchment compensation.

However, this plea of the learned counsel cannot be accepted as retrenchment compensation is also a service benefits. The respondent has produced detail of the retrenchment benefits Ext. RW1/C of retrenched employees on record. It would be evident from the perusal of Ext. RW1/C that the respondent has calculated the retrenchment compensation of the petitioner according to length of his service and has also added a sum of Rs.5100/- only as one month's wages of the notice period, the sum total whereof is Rs.94,780/- and the petitioner has admitted receipt of the same. It would also be evident from the perusal of detail of retrenchment benefits Ext. RW1/C that the basic pay of the petitioner has been shown Rs.7625/- and a sum of Rs.5100/- only has been paid as notice period salary and thus one month wages were not paid to the petitioner. Hence in view of the evidence of RW1 coupled with detail of retrenchment benefits Ext. RW1/C as well as admission of receipt of sum of Rs.94,780/- by the petitioner (PW1), it is established on record that the respondent has paid the retrenchment compensation to the petitioner on 10.7.2018 as is evident from bank account statement Ext. RW1/D produced on record by the respondent but one full month's wages in lieu of the notice period were not paid to him. Hon'ble Supreme Court in **Nar Singh Pal vs. Union of India and ors. (2000) 3 SCC 588** has held that the acceptance of retrenchment compensation by the employee does not debar him to challenge his retrenchment.

25. Hence, in view of law laid down by the Hon'ble Supreme Court in the above said case the question which requires adjudication is whether or not the order of retrenchment Ext. RW1/B of the petitioner is legal and valid.

26. The learned Counsel for the petitioner, as has been observed above, has submitted that the provisions of Section 25-N instead of Section 25-F of the I.D. Act are applicable to the present case as more than 300 workers were working in the respondent company which falls within the definition of factory as per provisions of Section 2 (m) read with Section 2(k) (iii) of Factories Act, 1948 as the respondent company is generating and transmitting the power and the respondent has retrenched the petitioner in violation of the provisions of Section 25-N of the I.D. Act.

27. Before answering this question, it is pertinent to note here that the petitioner, in his petition, has not alleged the violation of Section 25-N of the I.D. Act; rather the petitioner has alleged the violation of Sections 25-F, 25-G and 25-H of the I.D. Act, however, it may also be noted here that appropriate Government has made reference to this court for adjudication as to whether the termination of the services of the petitioner after paying retrenchment compensation amounting to Rs.94,780/- and retaining juniors, without complying with the provisions of Industrial Disputes Act, is legal and justified and therefore, in view of reference made by the appropriate Government, this court is bound to adjudicate as to whether or not the services of the petitioner were terminated in violation of any provision of the I.D. Act and as such non-pleading of violation of Section 25-N of the I. D. Act by the petitioner is not fatal to the case of the petitioner.

28. Now let us see whether Section 25-N of Chapter VB of I.D. Act is applicable to the present case. Section 25-K speaks about the application of Chapter VB which read as under:—

> **25K. Application of Chapter V-B.—**
>
> (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.
>
> (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

29. Section 25-L defines the industrial establishment which reads as under:—

"25L.**Definitions**:-

For the purposes of this Chapter,

(a) "industrial establishment" means;

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(ii) a mine as defined in clause (i) of sub- section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation [not being a corporation referred to in sub-clause (i) of clause (a) of section 2] established by or under any law made by Parliament, the Central Government shall be appropriate Government".

30. Section 25-N provides condition precedent to retrenchment of workmen, the relevant provisions whereof reads as under:—

"25N.**Conditions precedent to retrenchment of workmen** :-

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly thebreasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) to (9)…….

31. Thus in view of provisions of Sections 25-K of I.D.Act, Chapter V-B applies to the "industrial establishment" (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months.

32. "Industrial establishment" as per Section 25-L (a) means factory as defined under Section (m) of Section 2 of Factories Act. **Section 2 (m) of the Factories Act** reads as under:—

> "2(m) "Factory" means any premises including the precincts thereof:
>
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
>
> (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on: but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952)], or [11][a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place".

33. **"Manufacturing process"** has been defined under Section 2 (k) of the Factories Act which reads as under:—

> "2(k) "Manufacturing process" means any process for:
>
> (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
>
> (ii) pumping oil, water, sewage or any other substance, or;
>
> (iii) generating, transforming or transmitting power; or
>
> (iv) composing types for printing, printing by the letter press, lithography, photogravure or other similar process or book binding; or
>
> (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
>
> (vi) preserving or storing any article in cold storage;"

34. Hence, in view of provisions of Section 2(m) read with Section 2 (k) (iii) of Factories Act, premises where process for generating and transmitting power is carried on by ten or more workers with the aid of power or by twenty or more workers without the aid of power falls within the definition of the "factory".

35. In the case in hand, it is admitted case of the respondent they had completed the construction of power project in the year 2017 and the generation of power has started in February, 2017 and 300 workers were working in the project as stated by Sunil Guleria, RW1 and therefore the respondent company is a "factory" as per the provisions of Section 2 (m) and 2(k) (iii) of Factories Act and thus Section 25-N of Chapter VB of I.D. Act shall apply to the present case and

the petitioner could have been retrenched as per the provisions of Section 25-N of I.D. Act. The respondent, as per the provisions of Section 25-N was required to issue three months notice to the petitioner before his retrenchment or the respondent was required to pay three months wages in lieu of the notice period and respondent was also required to seek prior permission of retrenchment from the appropriate Government, however, the respondent admittedly has neither issued three months notice nor paid three months wages in lieu of notice period to the petitioner nor sought permission from the appropriate Government before retrenchment of the petitioner vide order dated 14.6.2018 Ext. RW1/B and as such the retrenchment order having been passed in contravention of Section 25-N is illegal, null and void and is liable to be set aside on this count as well.

36. Without prejudice, to above, even if the plea of learned counsel for the respondent that Section 25-N of the I.D. Act is not applicable to the present case and thus the respondent was not required to comply with the provisions of Section 25-N before retrenchment of the petitioner is accepted, even then the respondent has not retrenched the petitioner as per provisions of Section 25-F of the I.D. Act.

37. Hon'ble Supreme Court in **Anoop Sharma v/s Executive Engineer, Public Health Division No. 1 Panipat (Haryana), 2010 (5) SCC 497** in para Nos. 14 to 17 has held as under:—

> **"[14]** The question whether the offer to pay wages in lieu of one month's notice and retrenchment compensation in terms of Clauses (a) and (b) of Section 25F must accompany the letter of termination of service by way of retrenchment or it is sufficient that the employer should make a tangible offer to pay the amount of wages and compensation to the workman before he ask to go was considered in **National Iron and Steel Company Ltd. v. State of West Bengal, 1967 2 SCR 391**. The facts of that case were that the workman was given notice dated 15.11.1958 for termination of his service with effect from 17.11.1958. In the notice, it was mentioned that the workman would get one month's wages in lieu of notice and he was asked to collect his dues from the cash office on 20.11.1958 or thereafter during the working hours. The argument of the Additional Solicitor General that there was sufficient compliance of Section 25F was rejected by this Court by making the following observations:
>
> The third point raised by the Additional Solicitor-General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25F of the Industrial Disputes Act had not been complied with. Under that section, a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice had expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from 17th November and that he would get one month's wages in lieu of notice of termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, Section 25F, had not been complied with under which it was incumbent on the employer to pay the workman, the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be

asked to collect his dues afterwards. As there was no compliance with Section 25F, we need not consider the other points raised by the learned Counsel.

[15] In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

[16] The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words:

The underlying object of Section 25F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary, Clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

[17] If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act".

38. Thus, in view of law laid down by Hon'ble Supreme Court in the above said case, the provisions of Section 25-F (a) and (b) are mandatory and the employer has to pay one month's wages in lieu of notice period and retrenchment compensation to the workman at the time of retrenchment and payment of compensation after retrenchment would vitiate and nullify the retrenchment .

39. In the case in hand, the respondent has terminated the services of the petitioner vide order dated 14.6.2018 and therefore in view of law laid down by Hon'ble Supreme Court in **Anoop Sharma's case supra,** the respondent was required to pay the wages of notice period as well as retrenchment compensation to the petitioner on 14.6.2018 itself whereas the respondent had not paid one full month's wages in lieu of notice period and had paid retrenchment compensation to the petitioner on 10.07.2018. Hence, it is established on record that the respondent has retrenched the petitioner without complying with the provisions of Section 25-F (a) and (b) of the I.D. Act and therefore the retrenchment of the petitioner in view of the law laid down by Hon'ble Supreme Court in above said case isvitiated and is liable to be set aside on this count as well.

40. The petitioner has also alleged violation of Sections 25-G and 25-H of the I. D. Act. The petitioner has alleged that the persons juniors to him were retained in service by the respondent while terminating his services and thereby violated the principle of 'last come first go' and the

persons who are terminated with him were re-engaged and fresh hands were engaged by the respondent. The petitioner has averred that Uma Kumari, Ram Singh, Bablu, Surender, Chamaru, Tek Chand, Prem Lal, Dila Ram, Shyam Lal, Jeet Singh, Sunder Kumar and Durga Ram were retained by the respondent while terminating his services and the petitioner while appearing as PW1 has also stated so. In his cross-examination, he has denied that the workmen shown by him in para No.10 of claim petition are skilled workmen and there is no parity between them and him. On the other hand Sunil Guleria RW1 has stated that Uma Kumari is nurse, Ram Singh is mechanic and Bablu and Surinder are expert in cleaning power house floor and their services were required by the company. In his cross-examination he has admitted that they have retained the workmen shown in para No.10 of the petition.

41. The petitioner has placed seniority list Ext. PA on record. It is admitted case of the parties that the petitioner was engaged as Supervisor on 1.9.2011 and he has been shown at serial No.123 in the seniority list Ext. PA. It would be evident from perusal of Ex.PA that all the supervisorwere not retrenched by the respondent . Supervisor Chuhru Ram shown at Sr.No.121 engaged on 30.11.2011 after the engagement petitioner on 01.09.2011 was retained by the respondent while terminating the services of petitioner w.e.f. 15.6.2018 and thereby violated the principle of 'last come first go'. Hence, violation of Section 25-G of the I.D. Act is proved,

42. The petitioner, however, has not led cogent evidence on record to prove that fresh hands were engaged after his retrenchment and therefore the petitioner has failed to prove violation of Section 25-H of the I.D. Act.

43. The petitioner thus has proved that the respondent has retrenched him in contravention of the provisions of Sections 25-N or Section 25-F and 25-G of the I.D. Act and therefore the retrenchment order dated 14.6.2018 Ext. RW1/B being illegal is liable to be set aside and the petitioner is liable to be reinstated in service with continuity in service from the date of his illegal retrenchment i.e. 15.6.2018 along with all the consequential service benefits and seniority.

44. So far back wages are concerned, the petitioner PW1 has stated that he is unemployed since the date of his illegal termination/retrenchment and his evidence to this effect has not been shattered on record. Hon'ble Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324** has held that if the employer wants to avoid payment of full back wages, then it has to plead and prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. In the case in hand the respondent has not led any evidence on record to prove that the petitioner was gainfully employed anywhere and therefore he also entitled to back wages along with other benefits. Hence, issue No.1 partly and issue No.3 are decided in favour of the petitioner and issue No.2 is decided against the respondent and are answered as such.

Relief

45. In view of my findings returned on issues No.1 and 3 above, the claim petition is allowed. The order of retrenchment dated 14.6.2018 Ext. RW1/B is set aside and the respondent is directed to reinstate the petitioner forthwith on the post which he held on 14.6.2018 with continuity in service along-with all the consequential service benefits including seniority and back wages. The amount of retrenchment compensation already paid by the respondent to the petitioner shall be adjusted against arrears of the back wages and remaining arrears of back wages shall be paid to the petitioner within three months from the date of Award, failing which the petitioner shall be entitled to interest @ 9% per annum on the amount of arrears from the date of institution of petition till

realization of the whole amount. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

46. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of December, 2023.

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala,H.P.

Kamal Kumar

Vs.

M/s Astra Lighting, Nalagarh

(Refrence No. 153 of 2019)

22.12.2023

Present: Shri Prateek Kumar, Advocate for petitioner.
Shri Rajeev Sharma, Advocate for respondent.

With the efforts of this Tribunal, the matter has been settled between the parties.

Today, it has been stated by Ms. Gurdeep Chehal that she is ready and willing to make the payment as per document Ex. C-1 along-with Rs. 7500/- to per person as mentioned in Ex. C-1, within a period of six months and entire amount will be deposited in the Court on or before 30.06.2023. To this effect, her statement recorded separately and placed on record.

Vide separate statement Shri Kamal Kumar, Special Power of Attorney on behalf of the petitioners has stated that he is special power of attorney on behalf of all the petitioners, which is on the record as Ex. C-2 and is competent to make the statement on behalf of the petitioners. He has heard the statement of respondent and accordingly the matter be decided.

Therefore, keeping in veiw the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to deposit the agreed amount as mentioned in document Ex. C-1 (Rs. 29,89,180) + Rs. 7500/- per person i.e (Rs. 2,47,500), Total amount Rs. 32,36,680/- before this Court/Tribunal on or before 30.06.2023, failing which the same shall carry interest @ 9% per annum. The SPA holder shall withdraw the deposited amount after filing appropriate application before this Court/ Tribunal.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall

form integral part of the award/order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
22.12.2023

Presiding Judge,
Labour Court, Shimla, Camp at Nalagarh.

Data Ram

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 193 of 2020

27.12.2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Ram Singh

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 194 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Kashowati

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 195 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary

alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Raj Kumar

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 199 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to

pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Baljeet Singh

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 200 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Akram Khan

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 201 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Rishi Pal
Versus
Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 202 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary

alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Ref. No. 203 of 2020

Sajid

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner

within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Om Pal

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref No. 204 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Roop Narayan

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 205 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall from integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Pushpa Devi

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 210 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary

alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Ganesh

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 211 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall from integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Kanto Devi

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 212 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Raghuvir Singh

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 213 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Raghuvir Singh

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 213 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one

month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Sundri Devi

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023 **Ref. No. 214 of 2020**

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Kunti Devi

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 215 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Sohan Lal

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023 **Ref. No. 216 of 2020**

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Vikram Singh

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023 **Ref. No. 220 of 2020**

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary

alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Madan Lal

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref No. 221 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner

within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall from integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Vinod Kumar

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023 **Ref. No. 222 of 2020**

Present: Sh. Vikas Nagra, Ld Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Munni Devi

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 223 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Ravi Kumar

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 224 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary

alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Manish

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 225 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner

within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Bhagat Ram

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 226 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner
Sh. Ashok Mehta, respondent in person

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Raj Kumar

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref. No. 227 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

Ram Singh

Versus

Ashok Mehta, Rubykon Mfg. Nahan

Ref . No. 228 of 2020

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary

alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 27-12-2023

KRISHAN KUMAR,
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number	**:**	**14 of 2020**
Instituted on	**:**	**17-02-2019**
Preliminary Issue Framed on	**:**	**12-01-2022**
Decided on	**:**	**19-12-2023**

Balwant Kumar Sharma, s/o Shri Roshan Lal, r/o Village Kanyana, PO Bhadwada, Tehsil Sarkaghat, District Mandi, HP. ...*Petitioner.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, HP. ...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K Khidtta, Advocate
For the Respondent	:	Shri Rajeev Sharma, Advocate

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper**

Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? ..*OPR*

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 01.05.2010 by the respondent company and worked continuously as such till 19.11.2018. The services of the petitioner have been terminated by the respondent w.e.f. 14.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 19.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 19.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 20.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 19.11.2018 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 46,112/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the

petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 14.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 14.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 19.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter on 20.11.2018 but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 27.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 14.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 19.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 27.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet

and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 03.12.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 21.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 25.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 14.02.2019 and paid him the full and final financial dues amounting to Rs. 46,112/- and gratuity amount of Rs. 60,573/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet dated 19.11.2018 Ex. R-1, letter dated 27.11.2018 Ex. R-2, letter dated 03.12.2018 Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 25.01.2019 Ex. R-6, extension of time to file reply to show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.05.2010 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 19.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 03.12.2018 Ex.

R-11, copy of proceedings, statement of witnesses and documents Ex. RX-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. . He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd show cause notice Ex. PW-1/E, reply to the show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G, enquiry report Ex. PW-1/H.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in

accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word "misconduct" is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee's under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposted in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that

proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors**., **has held that the Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980**. Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in ***Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483*** has held under para 25 and 26**,** as under:

> "25. **In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.**

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in ***Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595*** has held as under:

"**The recent decision of this Court bearing on this matter is the one rendered in State Bank of India v. R. K. Jain and others (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid, down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by .-adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity ,or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether' tile ,order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.**

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to' request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the. appellant, therein had made no such request; and therefore the contention that the

Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25.Again their Loardships of Hon'ble Supreme Court, in case titled as ***Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr. decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652*** has held as under:

"**It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workmen is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of ` the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".**

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

KRISHAN KUMAR,
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

RE-CALLED/TAKEN-UP AGAIN

30-12-2023

Present: Shri R.K Khidtta, Advocate for petitioner
Shri Rajiv Sharma, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K. Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 14 of 2020, in case tilted Balwant Kumar Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl. of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

> **11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been**

referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vatage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of Rs. **50,000/- (**Rs. **Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc**., if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th day of December, 2023.

KRISHAN KUMAR,
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

ब अदालत तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी, तहसील सन्धोल, जिला मण्डी (हि0प्र0)

मुकद्दमा : नाम दुरुस्ती मिसल नम्बर : 24 / 2024 तारीख दायर : 31–08–2024
तारीख पेशी : 30–09–2024

श्री जगपाल सिंह मन्ढोत्रा पुत्र सोहन सिंह, निवासी गांव सन्धोल (भलूई), डा0 व तहसील सन्धोल, जिला मण्डी (हि0प्र0) .. प्रार्थी।

बनाम

आम जनता .. प्रत्यार्थी।

अधीन धारा 37(2) भू–राजस्व अधिनियम, 1954 के तहत आवेदन–पत्र।

श्री जगपाल सिंह मन्ढोत्रा पुत्र सोहन सिंह, निवासी गांव सन्धोल (भलूई), डा0 व तहसील सन्धोल, जिला मण्डी (हि0प्र0) द्वारा समस्त औपचारिकताओं सहित इस न्यायालय में प्रस्तुत आवेदन–पत्र में उल्लेख किया है कि उसका वास्तविक नाम जगपाल सिंह मन्ढोत्रा है जबकि राजस्व अभिलेख मुहाल सन्धोल में उसका नाम जगपाल दर्ज है जो कि गलत है। इसलिये प्रार्थी ने निवेदन किया है कि राजस्व अभिलेख मुहाल सन्धोल में प्रार्थी के नाम की दुरुस्ती की जाकर उसका नाम जगपाल उर्फ जगपाल सिंह मन्ढोत्रा दर्ज किया जाये।

अतः इससे पूर्व कि मामला में अधीन धारा 37(2) भू–राजस्व अधिनियम, 1954 के तहत आगामी आवश्यक कार्यवाही अमल में लाई जाए, इस नोटिस द्वारा जनसाधाराण को सूचित किया जाता है कि यदि किसी को उपरोक्त मामला में कोई उजर / एतराज हो तो वह इस न्यायालय में दिनांक 30–09–2024 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर आकर अपना उजर / एतराज पेश कर सकता है अन्यथा गैर हाजरी की सूरत में एक तरफा कार्यवाही अमल में लाई जाएगी एवं प्रार्थी के आवेदन पत्र का नियमानुसार निपटारा कर दिया जायेगा।

आज दिनांक 31–08–2024 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
सन्धोल, जिला मण्डी (हि0प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, मण्डप, जिला मण्डी (हि0प्र0)

प्यार सिंह पुत्र गिरधारी लाल, निवासी ठाना, डा0 बरोटी, उप–तहसील मण्डप, जिला मण्डी (हि0प्र0) ..... प्रार्थी।

बनाम

दीप राज आदि निवासीगण निवासी ठाना, डा0 बरोटी, उप–तहसील मण्डप, जिला मण्डी (हि0प्र0) ..... प्रत्यार्थीगण।

विषय–– तकसीम धारा 123 हि0 प्र0 भू–राजस्व अधिनियम, 1954।

प्रार्थी ने उपरोक्त प्रार्थना–पत्र इस आशय से इस न्यायालय से प्रस्तुत किया है कि प्रार्थी की भूमि खाता खतौनी नं0 67 / 82, ता 89, खसरा नं0, कित्ता 30, रकबा तादादी 01–86–54 है0, माल 14.82, वाक्या मुहाल ठाणा / 128 की तकसीम की जावे।

अतः 1. दीप राज पुत्र धर्म चन्द, 2. कमली देवी पुत्री गिरधारी लाल, 3. लिप्सा ठाकुर, इप्सीता ठाकुर पुत्रियां सतीश कुमार, 4. संतोष कुमारी पुत्री कौशल्या देवी, 5. केसर सिंह, रंगीला राम पुत्रगण रेलू राम, 6. जै सिंह पुत्र तवारसू, 7. मेहर चन्द पुत्र भीखमू पत्नी स्व0 खिमा, 8. डूमाणा पुत्र अनन्त राम, 9. रमेश पुत्र बिमला देवी पुत्री कमला देवी पुत्री निकी देवी पुत्री शीला देवी राम देई पत्नी स्व0 मुन्शी, 10. जगत राम पुत्र गोदाबरी पुत्री, विद्या देवी पुत्री, सरस्वती पुत्री तिखु, 11. कृष्ण कुमार पुत्र, ललीता देवी पुत्री, दीपा देवी पत्नी, कमला पुत्री, चन्द्रावती पुत्री, अती देवी पुत्री, विद्या पुत्री देवी राम, 12. सुरेन्द्र पाल पुत्र अच्छरु, समस्त निवासी मालौण, डा0 पैहड़ को इश्तहार द्वारा सूचित किया जाता है कि वह असालतन या वकालतन हाजर न्यायालय आकर मिति 28–09–2024 को दोपहर 12.00 बजे पैरवी मुकद्दमा कर सकते हैं। गैर हाजरी की सूरत में कार्यवाही एक पक्षीय अमल में लाई जावेगी।

आज दिनांक 21–08–2024 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
मण्डप, जिला मण्डी (हि0प्र0)।

————————

ब अदालत श्रीमती शान्ता शुक्ला, कार्यकारी दण्डाधिकारी एवं नायब तहसीलदार, करसोग, जिला मण्डी (हि0प्र0)

मिसल नम्बर : 13 तारीख मरजुआ : 12–08–2024 तारीख पेशी 23–09–2024

अच्छरी देवी पत्नी श्री समेरू राम, निवासी जाडी सेरी, डा0 भनेरा, तहसील करसोग, जिला मण्डी (हि0प्र0)

बनाम

आम जनता

प्रार्थना–पत्र अधीन धारा 13(3) हि0 प्र0 जन्म व मृत्यु पंजीकरण अधिनियम अच्छरी देवी पत्नी श्री समेरू राम, निवासी जाडी सेरी, डा0 भनेरा, तहसील करसोग, जिला मण्डी (हि0प्र0) का आवेदन पत्र जो मुख्य चिकित्सा अधिकारी मण्डी, जिला मण्डी के माध्यम से इस न्यायालय में प्राप्त हुआ है। प्रार्थिया ने अपने प्रार्थना–पत्र के साथ शपथ–पत्र, प्रपत्र संख्या 10, व रिपोर्ट उपप्रधान ग्राम पंचायत सवामाहू प्रस्तुत करते हुए निवेदन किया है कि प्रार्थिया की नानी सुवदू उर्फ सुन्दरु जिसकी मृत्यु दिनांक 03–08–1976 को हुई है। लेकिन किसी कारणवश / इलाका गैर होने के कारण प्रार्थिया अपनी नानी की मृत्यु को ग्राम पंचायत संवामाहू के जन्म व मृत्यु पंजीकरण रजिस्टर में दर्ज न करवा सकी और कटवाने बारे निवेदन किया है। इस सदंर्भ में प्रार्थिया द्वारा अपनी नानी की मृत्यु तिथि दिनांक 03–08–1976 दर्ज करने बारे जिला पंजीयक जन्म एवं मृत्यु एवं जिला चिकित्सा अधिकारी मण्डी के कार्यालय में आवेदन किया गया था जिस पर जिला चिकित्सा अधिकारी मण्डी की रिपोर्ट प्रार्थना–पत्र के साथ प्राप्त हो चुकी है।

आम जनता को राजपत्र में प्रकाशन द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थिया की नानी की मृत्यु तिथि 03–08–1976 दर्ज करवा कर नाम कटवाने बारे कोई उजर व एतराज हो तो वह अपना उजर व एतराज इस अदालत में मिति 23–09–2024 को प्रातः 10.00 बजे पेश कर सकते है। किसी से कोई उजर व एतराज प्राप्त न होने पर प्रार्थिया की नानी की मृत्यु तिथि दर्ज करवाकर नाम काटवाने ग्राम पंचायत संवामाहू के जन्म व मृत्यु पंजीकरण रजिस्टर में आदेश प्रदान कर दिए जायेंगे।

आज दिनांक 13–08–2024 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी एवं नायब तहसीलदार,
करसोग, जिला मण्डी (हि0प्र0)
।

————————

समक्ष ऋषभ शर्मा व अख्तियार सहायक समाहर्ता प्रथम श्रेणी, तहसील शिमला ग्रामीण, जिला शिमला (हि0प्र0)

मुकद्दमा संख्या : 91 / 2023 तारीख मरजुआ : 04–09–2023 तारीख पेशी : 14–10–2024

श्री राकेश कुमार पुत्र श्री नथू राम, निवासी गांव / मोहाल क्यार, तहसील शिमला ग्रामीण, जिला शिमला (हि0प्र0) .. प्रार्थी।

बनाम

1. श्री राम कृष्ण पुत्र दिवलू, 2. श्री गीता राम पुत्र दिवलू, 3. श्री सिद्धार्थ पुत्र स्व0 श्री ईश्वर दत, 4. कुमारी काव्या पुत्री स्व0 श्री ईश्वर दत, 5. कुमारी नव्या पुत्री स्व0 श्री ईश्वर दत, 6. श्रीमती रजनी पत्नी स्व0 श्री ईश्वर दत, 7. श्री मस्त राम पुत्र भिखू, 8. श्रीमती उमा पुत्री मस्त राम, 9. श्रीमती शकुन्तला पुत्री मस्त राम, 10. श्री हरी दास पुत्र मस्त राम, 11. श्री अजय कुमार पुत्र स्व0 श्री ओम प्रकाश, 12. श्री विजय कुमार पुत्र स्व0 श्री ओम प्रकाश 13. श्रीमती बबीता पुत्री स्व0 श्री ओम प्रकाश, 14. श्रीमती देवकू देवी पत्नी स्व0 श्री ओम प्रकाश, 15. श्री तोता राम पुत्र स्व0 श्री धनू, 16. श्री मस्त राम पुत्र धनू, 17. श्री गोपाल सिंह पुत्र स्व0 श्री बेसरू देवी, 18. श्री रूप राम पुत्र स्व0 श्री बेसरू देवी, 19. श्री जोगिन्द्र पुत्र स्व0 श्री बेसरू देवी, 20. श्रीमती मीना देवी पुत्री स्व0 श्री बेसरू देवी, 21. श्रीमती बती देवी पुत्री स्व0 श्री बेसरू देवी समस्त निवासीगण गांव / मोहाल क्यार, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0 .. प्रतिवादीगण।

प्रार्थना–पत्र बराय जेर धारा 123 के अन्तर्गत तकसीम हेतु प्रार्थना–पत्र बाबत भूमि मन्दरजा खाता / खतौनी नं0 51 / 121, ता 127, कित्ता 36, रकबा तादादी 03–13–69 है0, मोहाल / मौजा क्यार, तहसील शिमला ग्रामीण, जिला शिमला (हि0प्र0)।

प्रार्थना–पत्र श्री राकेश कुमार पुत्र श्री नथू राम, निवासी गांव / मोहाल क्यार, तहसील शिमला ग्रामीण, जिला शिमला (हि0प्र0) ने न्यायालय में प्रार्थना–पत्र बराये जेर धारा 123 के अन्तर्गत तकसीम खाता / खतौनी नं0 51 / 121, ता 127, कित्ता 36, रकबा तादादी 03–13–69 है0, मोहाल / मौजा क्यार, तहसील शिमला ग्रामीण, जिला शिमला बारे प्रस्तुत किया है। जिसमें प्रतिवादी नं0 3, 7, 8, 9, 13, 16 की तामिल साधारण तरीके से संभव न हो पा रही है।

अतः इश्तहार द्वारा प्रतिवादी नं0 3, 7, 8, 9, 13, 16 को सूचित किया जाता है कि यदि उक्त मामला बाबत तकसीम बारे कोई उजर व एतराज हो तो वह स्वयं व लिखित तौर पर दिनांक 14–10–2024 को अपराह्न 2.00 बजे तक कोर्ट परिसर चक्कर (DLSA Top Floor Room) में आकर अपना एतराज पेश करे अन्यथा एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 11–09–2024 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
शिमला ग्रामीण, जिला शिमला (हि0 प्र0)।

————————

समक्ष ऋषभ शर्मा व अख्तियार सहायक समाहर्ता प्रथम श्रेणी, तहसील शिमला ग्रामीण, जिला शिमला (हि0प्र0)

मुकद्दमा संख्या : 91 / 2023 तारीख मरजुआ : 04–09–2023 तारीख पेशी : 14–10–2024

श्री राकेश कुमार पुत्र श्री नथू राम, निवासी गांव / मोहाल क्यार, तहसील शिमला ग्रामीण, जिला शिमला (हि0प्र0) .. प्रार्थी।

बनाम

1. श्री राम कृष्ण पुत्र दिवलू, 2. श्री गीता राम पुत्र दिवलू, 3. श्री सिद्धार्थ पुत्र स्व0 श्री ईश्वर दत, 4. कुमारी काव्या पुत्री स्व0 श्री ईश्वर दत, 5. कुमारी नव्या पुत्री स्व0 श्री ईश्वर दत, 6. श्रीमती रजनी पत्नी स्व0 श्री ईश्वर दत, 7. श्री मस्त राम पुत्र भिखू, 8. श्रीमती उमा पुत्री मस्त राम, 9. श्रीमती शकुन्तला पुत्री मस्त राम, 10. श्री हरी दास पुत्र मस्त राम, 11. श्री अजय कुमार पुत्र स्व0 श्री ओम प्रकाश, 12. श्री विजय कुमार पुत्र स्व0 श्री ओम प्रकाश 13. श्रीमती बबीता पुत्री स्व0 श्री ओम प्रकाश, 14. श्रीमती देवकू देवी पत्नी स्व0 श्री ओम प्रकाश, 15. श्री तोता राम पुत्र स्व0 श्री धनू, 16. श्री मस्त राम पुत्र धनू, 17. श्री गोपाल सिंह पुत्र स्व0 श्री बेसरू देवी, 18. श्री रूप राम पुत्र स्व0 श्री बेसरू देवी, 19. श्री जोगिन्द्र पुत्र स्व0 श्री बेसरू देवी, 20. श्रीमती मीना देवी पुत्री स्व0 श्री बेसरू देवी, 21. श्रीमती बती देवी पुत्री स्व0 श्री बेसरू देवी, 22. श्रीमती सुमन पुत्री स्व0 श्री लुमचा, 23. श्रीमती भालकू पुत्री स्व0 श्री लुमचा, 24. श्रीमती माठी पत्नी स्व0 श्री लुमचा समस्त निवासीगण गांव / मोहाल क्यार, तहसील शिमला ग्रामीण, जिला शिमला, हि0 प्र0।
.. प्रतिवादीगण।

प्रार्थना–पत्र बराय जेर धारा 123 के अन्तर्गत तकसीम हेतु प्रार्थना–पत्र बाबत भूमि मन्दरजा खाता / खतौनी नं0 52 / 128, ता 131, कित्ता 14, रकबा तादादी 04–82–09 है0, मोहाल / मौजा क्यार, तहसील शिमला ग्रामीण, जिला शिमला (हि0प्र0)।

प्रार्थना–पत्र श्री राकेश कुमार पुत्र श्री नथू राम, निवासी गांव / मोहाल क्यार, तहसील शिमला ग्रामीण, जिला शिमला (हि0प्र0) ने न्यायालय में प्रार्थना–पत्र बराये जेर धारा 123 के अन्तर्गत तकसीम खाता / खतौनी नं0 52 / 128, ता 131, कित्ता 14, रकबा तादादी 04–82–09 है0, मोहाल / मौजा क्यार, तहसील शिमला

ग्रामीण, जिला शिमला बारे प्रस्तुत किया है। जिसमें प्रतिवादी नं0 3, 7, 8, 9, 13, 16, 22, 23, 24 की तामिल साधारण तरीके से संभव न हो पा रही है।

अतः इश्तहार द्वारा प्रतिवादी नं0 3, 7, 8, 9, 13, 16, 22, 23, 24 को सूचित किया जाता है कि यदि उक्त मामला बाबत तकसीम बारे कोई उजर व एतराज हो तो वह स्वयं व लिखित तौर पर दिनांक 14–10–2024 को अपराह्न 2.00 बजे तक कोर्ट परिसर चक्कर (DLSA Top Floor Room) में आकर अपना एतराज पेश करें अन्यथा एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 11–09–2024 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
शिमला ग्रामीण, जिला शिमला (हि0 प्र0)।

————————

ब अदालत नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, उप–तहसील नारग, जिला सिरमौर, हिमाचल प्रदेश

श्रीमती मधुबाला पुत्री राकेश चन्द हाल पत्नी काका राम, निवासी ग्राम पटांजी मशोबरा, डा0 कुज्जी, उप–तहसील नारग, जिला सिरमौर (हि0प्र0)।

बनाम

आम जनता

दरख्वास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती मधुबाला पुत्री राकेश चन्द हाल पत्नी काका राम, निवासी ग्राम पटांजी मशोबरा, डा0 कुज्जी, उप–तहसील नारग, जिला सिरमौर (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र मय शपथ–पत्र गुजारा है कि उसका जन्म दिनांक 11–05–1972 को हुआ है, जिसका इन्द्राज ग्राम पंचायत दीद घलुत, उप–तहसील नारग, जिला सिरमौर (हि0प्र0) में किन्हीं कारणों से दर्ज नहीं हुआ है।

अतः इस इश्तहार द्वारा आम व खास को सूचित किया जाता है कि यदि किसी को उक्त जन्म तिथि पंचायत रिकार्ड में दर्ज करने बारे कोई एतराज हो तो वह दिनांक 21–09–2024 को या इससे पूर्व अदालत में हाजिर होकर अपना एतराज पेश कर सकता है, अन्यथा सचिव, ग्राम पंचायत को सम्बन्धित उक्त जन्म तिथि दर्ज करने बारे आदेश जारी कर दिये जायेंगे।

आज दिनांक 13–08–2024 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप–तहसील नारग, जिला सिरमौर (हि0प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय वर्ग, माजरा, जिला सिरमौर, हिमाचल प्रदेश

मिसल नं0 : 24 / XIII of 2024 दिनांक : 20–08–2024

सर्वसाधारण को सूचित किया जाता है कि श्री वाहिद हसन पुत्र श्री सुबेददीन, निवासी मौजा पलहोडी, उप–तहसील माजरा ने इस कार्यालय में Case No. 24/XIII of 2024 (Case titled as Wahid Hassan Vs. General Public) मौजा पलहोडी के राजस्व रिकार्ड में अपना नाम दुरुस्त करने हेतु प्रार्थना–पत्र पेश किया है। जमाबन्दी वर्ष 2018–19 मौजा पलहोडी में प्रार्थी का नाम शहीद पुत्र श्री सुबेददीन कागजात माल दर्ज है। प्रार्थी राजस्व रिकार्ड में अपना नाम शहीद उर्फ वाहिद हसन पुत्र श्री सुबेददीन दर्ज करवाना चाहता है।

अतः इस इश्तहार के माध्यम से आपको सूचित किया जाता है कि यदि किसी भी व्यक्ति को उपरोक्त दुरुस्ती से कोई एतराज हो तो वह दिनांक 21–09–2024 को या इससे पूर्व इस न्यायालय में हाजिर आकर अपनी लिखित व मौखिक आपत्ति दर्ज करवा सकते है।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय वर्ग,
माजरा, जिला सिरमौर (हि0प्र0)।

————————

ब अदालत सहायक समाहर्ता द्वितीय वर्ग, माजरा, जिला सिरमौर, हिमाचल प्रदेश

मिसल नं0 : 24 / XIII of 2024 दिनांक : 20–08–2024

सर्वसाधारण को सूचित किया जाता है कि श्री वाहिद हसन पुत्र श्री सुबेददीन, निवासी मौजा पलहोडी, उप–तहसील माजरा ने इस कार्यालय में Case No. 24/XIII of 2024 (Case titled as Wahid Hassan Vs. General Public) मौजा पलहोडी के राजस्व रिकार्ड में अपना नाम दुरुस्त करने हेतु प्रार्थना–पत्र पेश किया है। जमाबन्दी वर्ष 2018–19 मौजा पलहोडी में प्रार्थी का नाम शहीद पुत्र श्री सुबेददीन कागजात माल दर्ज है। प्रार्थी राजस्व रिकार्ड में अपना नाम शहीद उर्फ वाहिद हसन पुत्र श्री सुबेददीन दर्ज करवाना चाहता है।

अतः इस इश्तहार के माध्यम से आपको सूचित किया जाता है कि यदि किसी भी व्यक्ति को उपरोक्त दुरुस्ती से कोई एतराज हो तो वह दिनांक 21–09–2024 को या इससे पूर्व इस न्यायालय में हाजिर आकर अपनी लिखित व मौखिक आपत्ति दर्ज करवा सकते है।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय वर्ग,
माजरा, जिला सिरमौर (हि0प्र0)।

————————

ब अदालत कार्यकारी दण्डाधिकारी, तहसील सैंज, जिला कुल्लू, हिमाचल प्रदेश

मिसल नं0 : 57 / 2024 तारीख मजरूआ : 27–08–2024 आगामी पेशी : 26–09–2024

श्री आलम चन्द पुत्र श्री शाउणू, निवासी गांव बड़ाही, डा0 पनिहार, तहसील सैंज, जिला कुल्लू (हि0प्र0) ..... प्रार्थी।

बनाम

आम जनता

विषय.––पंचायत रिकार्ड में मृत्यु तिथि दर्ज करने बारे।

श्री आलम चन्द पुत्र श्री शाउणू, निवासी गांव बड़ाही, डा0 पनिहार, तहसील सैंज, जिला कुल्लू (हि0प्र0) ने एक प्रार्थना–पत्र इस न्यायालय में इस आशय से प्रस्तुत किया है कि प्रार्थी की माता श्रीमती उतमी की मृत्यु दिनांक 20–09–1982 को हो चुकी है। प्रार्थी के अन्य सदस्य श्रीमती उतमी की मृत्यु तिथि को ग्राम पंचायत देवगढ़ गोही के रिकार्ड में गलती से दर्ज नहीं करवा सके। अब प्रार्थी अपनी माता श्रीमती उतमी की मृत्यु तिथि पंचायत रिकार्ड देवगढ़ गोही में दर्ज करवाना चाहता है। प्रार्थी ने अपने प्रार्थना–पत्र के समर्थन में आधार प्रति, शपथ–पत्र साथ संलग्न प्रस्तुत कर रखा है।

अतः आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति आम या खास को उपरोक्त मृत्यु दर्ज करने बारे कोई उजर / एतराज हो तो वह 26–09–2024 को असालतन या वकालतन प्रातः 11:00 बजे अधोहस्ताक्षरी के कार्यालय में हाजिर होकर अपना एतराज लिखित या मौखिक पेश कर सकता है। बसूरत गैरहाजिरी में एकतरफा कार्यवाही अमल में लाई लाएगी।

आज दिनांक 27–08–2024 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
तहसील सैंज, जिला कुल्लू (हि0प्र0)।

––––––––––

ब अदालत कार्यकारी दण्डाधिकारी, तहसील सैंज, जिला कुल्लू, हिमाचल प्रदेश

मिसल नं0 : 55 / 2024 तारीख मजरूआ : 28–08–2024 आगामी पेशी : 27–09–2024

श्री टिकम राम पुत्र श्री दुनी चन्द, निवासी गांव घाट, डा0 भलाण, तहसील सैंज, जिला कुल्लू (हि0प्र0)
प्रार्थी।

बनाम

आम जनता

विषय.––पंचायत रिकार्ड में मृत्यु तिथि दर्ज करने बारे।

श्री टिकम राम पुत्र श्री दुनी चन्द, निवासी गांव घाट, डा0 भलाण, तहसील सैंज, जिला कुल्लू (हि0प्र0) ने एक प्रार्थना–पत्र इस न्यायालय में इस आशय से प्रस्तुत किया है कि प्रार्थी की नानी श्रीमती नीमू की मृत्यु दिनांक 05–04–1974 को हो चुकी है। प्रार्थी के अन्य सदस्य श्रीमती नीमू की मृत्यु तिथि को ग्राम पंचायत भलाण–II के रिकार्ड में गलती से दर्ज नहीं करवा सके। अब प्रार्थी अपनी हकीकी नानी श्रीमती नीमू की मृत्यु तिथि पंचायत रिकार्ड भलाण–II में दर्ज करवाना चाहता है। प्रार्थी ने अपने प्रार्थना–पत्र के समर्थन में आधार प्रति, शपथ–पत्र साथ संलग्न प्रस्तुत कर रखा है।

अतः आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति आम या खास को उपरोक्त मृत्यु दर्ज करने बारे कोई उजर / एतराज हो तो वह 27–09–2024 को असालतन या वकालतन

प्रातः 11:00 बजे अधोहस्ताक्षरी के कार्यालय में हाजिर होकर अपना एतराज लिखित या मौखिक पेश कर सकता है। बसूरत गैरहाजिरी में एकतरफा कार्यवाही अमल में लाई लाएगी।

आज दिनांक 28–08–2024 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
तहसील सैंज, जिला कुल्लू (हि0प्र0)।

————————

ब अदालत कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार, भुन्तर, जिला कुल्लू (हि0प्र0)

केस नं0 : 46–BT / 2024 दायर तिथि : 09–07–2024

श्रीमती सवित्रा देवी पुत्री श्री डीणे राम, निवासी गांव व डा0 सचाणी, तहसील भुन्तर, जिला कुल्लू (हि0प्र0)।

बनाम

सर्वसाधारण एवं आम जनता

विषय.––प्रार्थना–पत्र अधिनियम धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती सवित्रा देवी पुत्री श्री डीणे राम, निवासी गांव व डा0 सचाणी, तहसील भुन्तर, जिला कुल्लू (हि0प्र0) ने इस कार्यालय में प्रार्थना–पत्र मय शपथ–पत्र दिया गया है कि उसका जन्म दिनांक 05–05–1974 को स्थान गांव व डा0 सचाणी, तहसील भुन्तर, जिला कुल्लू (हि0प्र0) में हुआ है परन्तु अपनी जन्म तिथि का इन्द्राज किसी कारणवश ग्राम पंचायत रोट, तहसील भुन्तर, जिला कुल्लू (हि0प्र0) के अभिलेख में दर्ज न करा सके।

अतः इस इश्तहार हजा द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को श्रीमती सवित्रा देवी पुत्री श्री डीणे राम की जन्म तिथि दर्ज करवाने बारे कोई आपत्ति हो तो वह दिनांक 24–09–2024 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार जन्म तिथि दर्ज करने के आदेश सम्बन्धित नगर पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 27–08–2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, जिला कुल्लू (हि0प्र0)।

————————

ब अदालत तहसीलदार एवं सहायक समाहर्ता, प्रथम श्रेणी, भुन्तर, तहसील भुन्तर, जिला कुल्लू (हि0प्र0)

केस नं0 : 30–NCT / 2022 दायर तिथि : 23–01–2024

श्रीमती विद्या देवी पुत्री श्री भाग चन्द पुत्र श्री देवी राम, हाल पत्नी श्री राजेन्द्र कुमार, निवासी गांव टन्डारी, डा0 भट्ठी, तहसील भुन्तर, जिला कुल्लू (हि0प्र0) .. प्रार्थिन।

बनाम

सर्वसाधारण एवं आम जनता .. प्रत्यार्थी।

विषय.––दरख्वास्त बराये कागजात माल में नाम की दुरुस्ती बारे।

श्रीमती विद्या देवी पुत्री श्री भाग चन्द पुत्र श्री देवी राम, हाल पत्नी श्री राजेन्द्र कुमार, निवासी गांव टन्डारी, डा0 भट्ठी, तहसील भुन्तर, जिला कुल्लू (हि0प्र0) द्वारा दिनांक 23–01–2024 को इस अदालत में प्रार्थना–पत्र पेश किया है कि उसका नाम सहबन गलती से फाटी मन्झली कोठी कोटकण्डी के राजस्व दस्तावेज में श्रीमती विद्या देवी पुत्री श्री भाग चन्द की जगह वीना देवी पुत्री श्री भाग चन्द दर्ज हुआ है जोकि गलत इन्द्राज हुआ है। अब प्रार्थिन अराजी हजा के इन्द्राज में अपना नाम दुरुस्त करके श्रीमती वीना देवी उर्फ विद्या देवी दर्ज करवाना चाहती है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी को उपरोक्त प्रार्थिन के नाम की दुरुस्ती का इन्द्राज करने बारे कोई एतराज हो तो वह दिनांक 24–09–2024 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार नाम दुरुस्ती का इन्द्राज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 27–08–2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
तहसीलदार एवं सहायक समाहर्ता, प्रथम श्रेणी,
भुन्तर, तहसील भुन्तर, जिला कुल्लू (हि0प्र0)।

————————

**ब अदालत कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार, भुन्तर,
तहसील भुन्तर, जिला कुल्लू (हि0 प्र0)**

केस नं0 : 17–MT / 2024 दायर तिथि : 10–07–2024

1. श्री जोगिन्द्र सिंह पुत्र श्री ठाकुर दास, निवासी गांव व डा0 शियाह, तहसील भुन्तर, जिला कुल्लू (हि0 प्र0)।

2. श्रीमती दुर्गा देवी पुत्री श्री कमल चन्द, गांव हेसीराशोरन, डा0 जलुग्रां, सब–तहसील जरी, जिला कुल्लू (हि0 प्र0)।

बनाम

सर्वसाधारण एवं आम जनता

विषय.–– प्रार्थना–पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण ने 10–07–2024 को इस अदालत में प्रार्थना–पत्र मय शपथ पेश किये हैं कि उन्होंने दिनांक 15–02–2022 को शादी कर ली है और तब से दोनों पति–पत्नी के रूप में रहते चले आ

रहे हैं परन्तु प्रार्थीगण ने अपनी शादी का इन्द्राज सम्बन्धित ग्राम पंचायत मंझली, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में दर्ज नहीं करवाया है।

अतः सर्वसाधारण व आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थीगणों की शादी से सम्बन्धित ग्राम पंचायत के अभिलेख में दर्ज करने बारे एतराज हो तो वह दिनांक 27–09–2024 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार शादी दर्ज करने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 02–08–2024 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, तहसील भुन्तर, जिला कुल्लू (हि0 प्र0)।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।